

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 103

CITY OF CHICAGO, A MUNICIPAL
CORPORATION, PETITIONER,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY; THE BALTIMORE AND OHIO
RAILWAY COMPANY; ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 104

PARMELEE TRANSPORTATION CO.
ET AL., APPELLANTS,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY CO., ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 103, PETITION FOR CERTIORARI FILED APRIL 11, 1957

CERTIORARI GRANTED MAY 27, 1957

NO. 104, FILED APRIL 12, 1957

JURISDICTION POSTPONED MAY 27, 1957

In the
United States Court of Appeals

For the Seventh Circuit

No. 11692

**THE ATCHISON, TOPERA AND SANTA FE RAIL-
WAY CO., ET AL.,**

Plaintiffs-Appellants,

vs.

THE CITY OF CHICAGO, ET AL.,

Defendants-Appellees,

AND

PARMELEE TRANSPORTATION CO.,

Defendant-Intervenor-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

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1 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

The Atchison, Topeka and Santa Fe
Railway Company, *et al.*
Plaintiffs-Appellants,

vs.

City of Chicago, a Municipal corpo-
ration, *et al.*,
Defendants-Appellees,
and

Parmelee Transportation Company,
Defendant-Intervenor-Appellee.

Civil Action
No. 55 C 1883.

STATEMENT REQUIRED BY RULE NO. 10(b) OF
THE RULES OF THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

Time of Commencement of the Action.

The action was commenced on October 24, 1955.

Names of the Parties.

Plaintiffs-Appellants:

The Atchison, Topeka and Santa Fe Railway Company
The Baltimore and Ohio Railroad Company
The Chesapeake and Ohio Railway Company
Chicago & Eastern Illinois Railroad Company
Chicago and North Western Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway Company
Chicago, Indianapolis and Louisville Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad
Company
Chicago, North Shore and Milwaukee Railway
Chicago, Rock Island and Pacific Railroad Company
Chicago South Shore and South Bend Railroad
Erie Railroad Company
Grand Trunk Western Railroad Company
2 Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Minneapolis, St. Paul & Sault Ste. Marie Railroad Com-
pany

The New York Central Railroad Company
 The New York, Chicago and St. Louis Railroad Company
 The Pennsylvania Railroad Company
 Wabash Railroad Company
 and Railroad Transfer Service, Inc., corporations.

Defendants-Appellees:

City of Chicago, a municipal corporation
 Richard J. Daley, not individually but as Mayor of said city
 John C. Melaniphy, not individually but as Acting Corporation Counsel of said city
 Timothy P. O'Connor, not individually but as Commissioner of Police of said city
 William P. Flynn, not individually but as Public License Commissioner of said city.

Defendant-Intervenor-Appellee:

Parmelee Transportation Company.

Dates of Filing Pleadings.

Plaintiffs' Complaint filed October 24, 1955.

Plaintiffs' motion for temporary restraining order filed October 24, 1955.

Motion of Parmelee Transportation Company to intervene as a defendant filed October 27, 1955.

Petition of Parmelee Transportation Company to intervene as a defendant filed October 27, 1955.

Motion of all defendants (except defendant-intervenor Parmelee Transportation Company) for summary judgment filed November 17, 1955.

Time When the Trial Was Had.

Hearings were held before the Court on October 28, 1955, and on November 10 and 17, 1955.

Name of Trial Judge.

Honorable Walter J. LaBuy.

Date of Final Judgment.

Final judgment was entered January 12, 1956, dismissing complaint and dissolving temporary restraining order.

Date Appeal Was Taken.

Notice of appeal was filed January 13, 1956.

4 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January, it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Six and of the Independence of the United States of America, the 180th Year.

Present:

Honorable John P. Barnes, Chief District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Win G. Knoch, District Judge.
Honorable Julius J. Hoffman, District Judge.
Roy H. Johnson, Clerk.
William W. Kipp, Sr., Marshal.

Thursday, January 12, 1956.

Court met pursuant to adjournment.

Present: Honorable Walter J. LaBuy, Trial Judge.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Wabash Railroad Company; and Railroad Transfer Service, Inc., corporations,

No. 55 C 1883.

Plaintiffs,

vs.

City of Chicago, a municipal corporation; Richard J. Daley, not individually but as Mayor of said city; John C. Melaniphy, not individually but as Acting Corporation Counsel of said city; Timothy P. O'Connor, not individually but as Commissioner of Police of said city, and William P. Flynn, not individually but as Public License Commissioner of said city,

Defendants.

Be It Remembered, that, on to-wit, the 24th day of October, 1955, the above-entitled action was commenced by the filing of a Complaint, in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

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IN THE UNITED STATES DISTRICT COURT.

(Caption—55-C-1883)

COMPLAINT.

Now come the plaintiff railroad companies (hereinafter referred to as "Terminal Lines") The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Wabash Railroad Company; and the plaintiff Railroad Transfer Service, Inc. (hereinafter referred to as "Transfer"), and for their cause of action against the defendants, and each of them, say as follows:

1. Each Terminal Line is a common carrier by rail, engaged in the interstate transportation of passengers and property for hire to, from, and within, the City of Chicago, and, as such carrier, is subject to the provisions of a certain act entitled "An act to Regulate Interstate Commerce" (49 U. S. C. A. § 1 et seq.). Pursuant to said act and filed tariffs, each Terminal Line has authority and obligation to transport through interstate passengers between their respective terminals in the City of Chicago, subject to the jurisdiction of the Interstate Commerce

Commission. Transfer is a Delaware corporation, with its principal office located in Chicago, Illinois, and is engaged, as more particularly hereinafter set forth, as the exclusive Agent of the Terminal Lines to perform for them the required interstation passenger and baggage transfer service which they themselves are required by said filed tariffs to provide, all pursuant to a certain written agreement (hereinafter referred to as "Agency Contract"), a copy of which is attached hereto as Exhibit A and by specific reference incorporated herein the same as if set forth verbatim herein.

2. The defendant City of Chicago is a municipal corporation located within the County of Cook and State of Illinois and existing under and by virtue of the laws of said state; the defendant Richard J. Daley is the duly elected, qualified and acting Mayor of said city; the defendant John E. Melaniphy is the duly appointed, qualified and acting "Acting Corporation Counsel" of said city; the defendant Timothy J. O'Connor is the duly appointed, qualified and acting Commissioner of Police of said city; and the defendant William P. Flynn is the duly appointed, qualified and acting Public Vehicle License Commissioner of said city.

3. At all times here material, there was and is in full force and effect within the corporate limits of the defendant City of Chicago a certain ordinance (hereinafter referred to as "Ordinance"), commonly known as the "Public Passenger Vehicle Ordinance" (Mun. Code of Chicago, § 28-1 through § 28-32, both inclusive), a copy of which said Ordinance is attached hereto as Exhibit B and by specific reference made a part hereof the same as if set forth verbatim herein. Said Ordinance purports to license and to regulate the operation of certain categories of public passenger vehicles for hire as defined in Section 28-1 thereof.

4. The Terminals Lines and Transfer have specifically and repeatedly advised the defendant City of Chicago, through the defendants Daley, Melaniphy and Flynn, its duly elected or appointed officials, that the provisions of said Ordinance did not apply to the operations of Transfer pursuant to the Agency Contract, Exhibit A; and, further, that if said Ordinance did apply to such operations, said Ordinance was void as an attempt to regulate Interstate Commerce in contravention of Art. 1, Sec. 8, Cl. 3 of the

Constitution of the United States; despite said advice, the defendant City of Chicago, acting through the defendants Daley, Melaniphy, O'Connor and Flynn, its duly authorized officials, has asserted and continues to assert that said Ordinance is valid and enforceable against Transfer, and that the defendant City of Chicago, acting through its officers, agents, servants and employees, would attempt to enforce said Ordinance against Transfer as a violator thereof by arresting Transfer's drivers operating its passenger motor vehicles used in the performance of Transfer's operations under the Agency Contract upon the streets of the City of Chicago without Transfer obtaining the "terminal vehicle license" for each such passenger motor vehicle as required by Section 28-2 of said Ordinance.

10. 5. The purpose of this action is to seek and obtain a declaration and determination of the inapplicability of said Ordinance to the operations carried on by Transfer's passenger motor vehicles pursuant to its aforesaid Agency Contract, or the unconstitutionality or voidness of said Ordinance. The jurisdiction of this Court is involved pursuant to 28 U. S. C. § 1331 and § 1337; the amount in controversy exceeds \$3,000.00.

6. Terminal Lines have filed tariffs with the Interstate Commerce Commission and the Illinois Commerce Commission for through passenger service (hereinafter referred to as "through service") from points outside Chicago to points beyond Chicago on, or reached via, the incoming and outgoing participating Terminal Lines. Over 99% of all such through passenger service is in interstate commerce.

The terminal station of each of the Terminal Lines is located in some one (1) of the eight (8) terminal railroad stations located in downtown Chicago (hereinafter referred to as "terminal stations"), as set forth in Exhibit C attached hereto and by specific reference incorporated herein the same as if set forth verbatim herein.

Three (3) of the terminal stations are used by one (1) Terminal Line; four (4) other terminal stations have from two (2) to four (4) Terminal Lines each; and one (1) terminal stations has six (6) Terminal Lines.

11. The relative location of the eight (8) terminal stations makes use of motor vehicle transportation desirable for passenger and baggage transfer between terminal stations to provide a link in the through or continuous

passenger transportation via Chicago wherever the Terminal Lines involved are not located in the same terminal station.

Under applicable tariffs, through passenger transportation service includes any required passenger and baggage transfer service from the terminal station in Chicago of the incoming line (hereinafter referred to as "Incoming Station") to the terminal station in Chicago of the outgoing line (hereinafter referred to as "Outgoing Station").

To eliminate the added expense of such required transfer as an influencing competitive factor for through passenger transportation purposes via Chicago, the Terminal Lines provide by tariff that any such required transfer service shall be without additional charge where the fare to destination is more than a specified minimum sum. Where the fare to destination is less than such minimum, a fixed charge which varies with the fare must be added to cover the required transfer service and collected at the time of issue of valid transportation. The entire expense of the required transfer service is absorbed by the Terminal Lines.

7. The required passenger and baggage transfer service to which the holder of through passenger transportation is entitled embraces three separate categories of 12 transfer service by motor vehicles:

(a) The transportation of the through passenger with, or without accompanying hand baggage, from the Incoming Station to the Outgoing Station shown on the Transfer Coupon (hereinafter referred to as "Coupon") issued to him as part of his through ticket for that purpose, upon delivery of the Coupon for cancellation to the Terminal Lines' Agent at the Incoming Station. Over 99% of all Coupon holders are transported with accompanying hand baggage; and in the case of 65% of all Coupon holders, such accompanying hand baggage consists of more than one article.

Ample accommodations for carrying hand baggage in a passenger motor vehicle suitable for the inter-station transportation of Coupon holders and accompanying hand baggage in the same vehicle having due regard for the safety, comfort and convenience of such passengers and the security of such hand baggage, embrace from 25% to 35% of the total available passengers and hand baggage carrying space in that vehicle;

(b) The interstation transportation of the hand baggage of the Coupon holder, unaccompanied by him, upon delivery of his Coupon for cancellation to the Terminal Lines' Agent at the Incoming Station. For this purpose, the passenger motor vehicle transporting Coupon holder or some suitable vehicle may be used;

(c) The interstation transportation of baggage checked through on the passenger's ticket (hereinafter referred to as "checked baggage"). Checked baggage is handled in motor vehicles separate from the motor vehicles in which the Coupon holders are transferred; and the required transfer is carried out by the Terminal Lines without action by the arriving through passenger.

8. For the effective period of the Agency Contract commencing with October 1, 1955, to September 30, 1960, the Terminal Lines have provided a transfer service between the terminal stations to be operated by Transfer with its own passenger motor vehicles and motor trucks, to perform as the Agent of Terminal Lines the three required transfer services which the Terminal Lines themselves are required by tariff to perform. The compensation to Transfer for its services, rendered as Agent for the Terminal Lines, to each through passenger is fixed by the Agency Contract on a schedule of specified per Coupon charges; and such specified charges apply in every case where any one of the three categories of required transfer service is rendered to the through passenger regardless of whether all, or only part, of such three categories of required transfer service are, or is, in fact rendered to him. Transfer is required to furnish and operate during the entire effective period of the Agency Contract a sufficient number of suitable passenger vehicles to carry out its passenger and hand baggage transfer service thereunder, and a sufficient number of suitable other vehicles to carry out its checked baggage transfer service thereunder.

9. Since October 1, 1955, to the present time and for the effective period of the Agency Contract, Transfer 14 (a) has devoted and will devote its passenger motor vehicles operating under the Agency Contract exclusively for use in the transportation of Coupon holders only, and (b) has operated and will operate these vehicles for the performance only of the required interstation passenger and hand baggage service which the Terminal

Lines are required by tariff to provide to their through passengers.

10. For all purposes material herein, there is a decisive difference between the scope of the operations of Transfer's passenger motor vehicles under the Agency Contract and since October 1, 1955, and the scope of the operations of the passenger motor vehicles in the period prior to October 1, 1955 (hereinafter referred to as "Prior Period") of the motor transportation enterprise (hereinafter referred to as "Prior Operator") which performed during the Prior Period required interstation passenger transfer service for Coupon holders. This decisive difference is that the Prior Operator's passenger motor vehicles were devoted in part to the use of two additional operations which are in the nature of local transportation (hereinafter referred to as "Additional Operations") but which Transfer is not required to carry on under the Agency Contract and which Transfer in fact has not carried on since October 1, 1955, to the present time, and will not carry on during the effective period of the Agency Contract.

(a) In connection with the passenger and hand baggage service to Coupon holders during the Prior Period, friends or relatives desiring to accompany a Coupon holder from his Incoming Station to his Outgoing Station were then accepted by the Prior Operator as passengers 15 (without baggage) for transportation from that Incoming Station to the Outgoing Station by the same passenger motor vehicle of the Prior Operator which transported that Coupon holder, upon the payment by the noncoupon holder to the driver of that vehicle of a flat fare per passenger—which fare was uniform without regard to distance between terminal stations; and

(b) In lieu of the required station-to-station transfer service to the Coupon holder during the Prior Period, the Prior Operator's passenger motor vehicle would take a Coupon holder to any hotel or other terminus in the loop district of Chicago as a convenience to that Coupon holder, as requested by him of the driver. In such case, the Coupon was collected for cancellation and the Coupon holder was not entitled thereafter to further transportation from his hotel or other loop district terminus destination to the Outgoing Station; and upon the delivery of that cancelled Coupon by the Prior Operator to the ap-

plicable Terminal Line, the Prior Operator would be paid for this accommodation service in the nature of local transportation to the Coupon holder.

11. Prior to October 1, 1955, Transfer paid all applicable state license fees and Chicago City vehicle taxes, and became authorized to operate, and is presently operating, as a contract carrier of property under the laws of Illinois.

12. The Ordinance has no application to Transfer's passenger motor vehicles:

(a) Transfer's vehicles are excepted from regulation of the Ordinance under Section 28-1 thereof;

16 (1) Section 28-1 provides as follows:

"'Public passenger vehicle' means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in the operation of a metropolitan transit authority or public utility under the laws of Illinois."

The specifications that a passenger motor vehicle, otherwise includible for regulation under the Ordinance (hereinafter referred to as "Includible Vehicle"), would become an excluded vehicle free from such regulation (hereinafter referred to as "Excepted Vehicle") if it is devoted "exclusively" in the operation of a public utility under the laws of Illinois has been in the Ordinance since January 30, 1952. From December 28, 1945 to December 20, 1951, a public passenger vehicle otherwise qualified as an Includible Vehicle would become an Excepted Vehicle "if it is used as part of, and in connection with," the operation of a public utility in the City of Chicago. From December 20, 1951, to January 30, 1952, such vehicle would become an Excepted Vehicle if "it is used in operation" of a public utility under the laws of Illinois. From January 30, 1952 to the present time, such vehicle would become an Excepted Vehicle if it is devoted "exclusively" * * * in the operation of a public utility under the laws of Illinois":

(2) Under the laws of Illinois, a passenger vehicle operated for hire otherwise qualified, is treated as being "operated as a public utility" if such operation performs a service defined by the Public Utilities Act to be a "public utility" operation, whether such public utility operation is the service offered by the operator of

the vehicle or by some other party qualified to offer such service, through the operation of the Excepted Vehicle by its operator as the Agent of such other party. (Ill. Rev. Stat. (1953) c. 111 $\frac{2}{3}$, Sec. 10.3);

(3) Each of the Terminal Lines is a public utility as defined in "An Act to regulate public utilities" (Ill. Rev. Stats. (1953) c. 111 $\frac{2}{3}$, Sec. 1 *et seq.*). Said Act was at all times here material, and is now in full force and effect as a part of the laws of the State of Illinois (hereinafter referred to as "Public Utilities Act"). Each Terminal Line is a "common carrier," as defined in paragraph 10.4 of said section, engaged in the "transportation of persons" as defined in paragraph 10.7 of said section:

"10.7 'Transportation of persons' defined. 'Transportation of persons' includes any service in connection with the receipt, carriage and delivery of the person transported and his baggage, and all facilities used or necessary to be used in connection with the safety, comfort and convenience of the person transported."

Paragraph 10.15 of said Section provides:

"10.15 'Service defined. 'Service' is used in its broadest and most inclusive sense, and includes not only the use or accommodation afforded consumers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any public utility in performing any service or in furnishing
18 any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public."

The passenger motor vehicles of Transfer operated by it as Exclusive Agent of the Terminal Lines under the Agency Contract to provide the required passenger and hand baggage transfer service which they themselves are required by tariff to perform, provides the service of the Terminal Lines specified in paragraph 10.15 above quoted. Accordingly, each of these passenger motor vehicles of Transfer is an Excepted Vehicle under Section 28-1 of the Ordinance;

(b) Transfer's passenger vehicle is not intended by the Ordinance to be a "terminal vehicle" as defined under Section 28-1 of the Ordinance in effect at all times after October 1, 1955, to the present time...

(1) By Amendment of December 20, 1951 (hereinafter

referred to as "1951 Amendment"), Section 28-1 defined "terminal vehicle" as follows:

"'Terminal Vehicle' means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers between terminal stations designated on through route railroad and steamship tickets."

(2) This 1951 Amendment created a special class of Includible Vehicle, designated as a "terminal vehicle" conforming to the following qualifying specifications:

19 (aa) the vehicle must be operated under contract between its operator and railroads and steamship companies; and

(bb) the contracted operations of the vehicle must be limited exclusively to the transfer of passengers between terminal stations designated on through railroad and steamship tickets;

(3) These qualifying specifications made possible the passenger transportation by the same terminal vehicle between the same designated terminal stations of two distinct categories of persons as passengers:

(aa) persons holding through railroad or steamship tickets who required such interstation transfer to reach their outgoing train or steamship to continue through transportation; and

(bb) other persons who might or might not be railroad or steamship passengers at the time when they were accepted as passengers of the terminal vehicle;

(4) By Amendment of January 30, 1952 (hereinafter referred to as "January 1952 Amendment"); Section 28-1 defined a terminal vehicle as follows:

"'Terminal vehicle' means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers from terminal stations designated on railroad and steamship tickets."

20 (5) The January 1952 Amendment changed the qualifying specifications of a terminal vehicle in effect prior thereto in one respect only. The destination points of the terminal vehicle transportation were not restricted by the January, 1952 Amendment to the terminal stations designated on railroad and steamship tickets. Accordingly, the origin point of the terminal vehicle transportation was re-

quired to be a terminal station of a railroad or steamship company, but the destination points of the terminal vehicle transportation were unrestricted within the area over which the City had jurisdiction, and such destination points could be for the first time an outlying railroad station or a hotel, home, office or business establishment within the city limits of Chicago;

(6) By Amendment of December 20, 1952 (hereinafter referred to as "December 1952 Amendment"), Section 28-1 and Section 28-31 defined a terminal vehicle and a terminal vehicle operator as follows:

"Section 28-1. 'Terminal Vehicle' means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers from terminal stations."

"Section 28-31. No person shall be qualified for a terminal vehicle license unless he has a contract with one or more railroads or steamship companies for the transportation of their passengers from terminal stations."

(7) The December 1952 Amendment changed the qualifying specifications of a terminal vehicle in effect prior thereto in one respect only. Passengers of the terminal vehicle were required to include passengers of the railroads and steamship companies with which the terminal vehicle operator had the contract or contracts for the transfer services of the vehicle involved. Prior to the effective date of the December 1952 Amendment, such railroad and steamship company passengers were permitted, but not required, passengers of the terminal vehicle;

(8) On June 13, 1955, the Terminal Lines formally notified Prior Operator that they would not require its passenger and hand baggage transfer services for their through passengers, effective at the close of business on September 30, 1955, or at any time prior thereto should any curtailment of service on the part of that Prior Operator be effected for any reason whatsoever;

(9) By Amendment of July 26, 1955 (hereinafter referred to as "1955 Amendment"), effective to the present time, Section 28-1 defined a terminal vehicle as follows:

"Section 28-1. 'Terminal vehicle' means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations

and steamship docks to points within the area defined in Section 28-31".

Section 28-31 provided:

"Section 28-31. Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship docks to destinations in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaines Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan."

22 (10). The 1955 Amendment changed the qualifications of a terminal vehicle in effect prior thereto in two respects:

(aa) the operation of a terminal vehicle need not be carried on under any contract between its operator and a railroad or steamship company; and

(bb) the passengers of the terminal vehicle were not required to include railroad or steamship passengers;

(11) A passenger vehicle of Transfer devoted exclusively for use under the Agency Contract conforms to the following distinctive specifications:

(aa) the origin point of the passenger transfer service performed by such Transfer vehicle is limited to terminal stations and steamship docks, and the destination point is limited to terminal stations and steamship docks designated on the railroad and steamship tickets of the passenger transported by it;

(bb) the only person qualified to become such a passenger is a holder of through transportation;

(12) A passenger vehicle of Transfer conforming to the specifications of subparagraph (11) conforms also to the following specifications to cause it to be excluded from the category of "terminal vehicle" either as an Excepted Vehicle under Section 28-1 of the Ordinance or as a vehicle whose operations are excluded from that category through the constitutional and statutory limitations on the City to include it therein:

(aa) the vehicle's operation is performed exclusively under railroad and steamship company contracts;

(bb) the vehicle's passengers are confined exclusively to the passengers;

23 (cc) the vehicle transportation service to these passengers is their required service;

(dd) the legal requirement for their service arises either under the Public Utilities Law of Illinois as an intrastate commerce service under the Interstate Commerce Commission Act and/or as an interstate commerce action. Accordingly, Transfer's passenger vehicles are not terminal vehicles under the Ordinance as amended on July 26, 1955, in effect to the present time;

(13) The possible applicability of the 1955 Amendment to the passenger vehicles of the Prior Operator from July 26, 1955, through September 30, 1955, in the Prior Period when its passenger vehicles were operated under contractual arrangements with the Terminal Lines to provide the required interstation transfer service for Coupon holders, and thereafter subsequent to the termination of such contractual arrangements, is related to the Additional Operations of these vehicles referred to in paragraph 10 above, which have not been required of Transfer's vehicles by the Agency Contract and have not in fact been performed by Transfer's vehicles since October 1, 1955, to the present time.

13. Section 28-32 of the Ordinance, Exhibit B, attached hereto, prescribes progressive penalties for successive violations of the Ordinance, with each day that the violation continues being treated as a separate offense.

Despite the inapplicability of the Ordinance to Transfer's passenger vehicles, defendants, and each of them, have manifested an intent to recover the penalties from Transfer and its employees provided by said Section 28-32. Plaintiffs are informed and believe and state the fact to be that a 24 period or at least one year could elapse before a final and binding determination of the issues involved with respect to the applicability or inapplicability of the Ordinance to Transfer's passenger vehicles could be effected as a result of such procedure; and, during said entire period of time, Transfer would be required either to assume the cost of defending each separate action or cease operations and by so doing breach its obligations and forfeit its rights under the Agency Contract. The Terminal Lines as a consequence would either be deprived entirely of an essential facility required for the performance of their services in the interstate transportation of passengers or would operate that facility unduly burdened by interruptions in service and weakened by financial hardships. Wherefore, the attempt by the defendants to determine the applicability of

this Ordinance in the manner heretofore alleged, without regard to its ultimate outcome, constitutes an undue burden upon, and interference with, interstate commerce, all in violation of Art. 1, Sec. 8, Cl. 3 of the Constitution of the United States.

14. In the alternative, plaintiffs allege that if the Ordinance is applicable to Transfer's vehicles, it is an attempt to regulate interstate commerce in a field in which Congress has already exercised regulatory power and, therefore, such Ordinance is void as being in violation of Art. 1, Sec. 8, Cl. 3 of the Constitution of the United States.

(a) At all times here material, there has been, and now is, in full force and effect a certain statute known as "An Act to regulate interstate commerce", which provides 25 in part as follows:

"The term 'railroad' as used in this part shall include all * * * terminal facilities of every kind used or necessary in the transportation of persons or property designated herein. * * * The term 'transportation' as used in this part shall include * * * other vehicles * * * and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract, express or implied, for the use thereof. * * *" (49 USCA Sec. 1(3) (a).)

"It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this title, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers." (49 USCA Sec. 1(4).)

"All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically
26 routed by the shipper. As used in this paragraph, the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title." (49 USCA Sec. 3(4).)

The power to regulate the manner in which a railroad shall carry out its responsibilities under the aforesaid Sections of the Interstate Commerce Act is vested by Congress exclusively in the Interstate Commerce Commission by Section 12 etc. of that Act.

(b) Under the foregoing provisions, a motor vehicle transportation company may be used by a railroad, as an agent or under a contractual arrangement, to perform required transfer services for the account of the railroad within its terminal area. When such services are performed by such a motor vehicle transportation company, for a railroad only, these services become the services of the railroad which are subject to regulation under the Interstate Commerce Act in the same manner as if they were performed by the railroad itself.

15. In the alternative, plaintiffs allege, that if not inapplicable or invalid for the reasons heretofore set forth in this Complaint, said Ordinance is invalid as an undue burden on interstate commerce in violation of Art. 1, Sec. 8, Cl. 3 of the Constitution of the United States.

(a) Section 28-31.1 of the Ordinance provides as follows:

27. "28-31.1 Public Convenience and Necessity. No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in Section 28-22.1, the commissioner shall report to the council that public convenience and necessity

require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.

"In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. The public demand for such service;
2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;
3. The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;
4. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner."

28 Section 28-1 provides:

"28-1. As used in this chapter:

"'Commissioner' means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city."

(b) Plaintiffs allege and so state the facts to be that the power of the Commissioner to determine the maximum number of additional terminal vehicles to be issued and the power of the City Council to fix the maximum number of additional terminal vehicle licenses to be issued up to the maximum number of additional licenses determined by the Commissioner constitute powers in them to determine the sufficiency of the number of passenger vehicle facilities necessary to provide adequate interstation transportation service which the Terminal Lines are required by law to provide to their interstate through passengers, without knowledge of the volume and nature and distinctive char-

acteristics of the interstate passenger business via Chicago as a junction point.

A proper exercise of this power by the Commissioner and the City Council requires, as a minimum, the knowledge of all the factors which influence the demand for, and supply of, suitable passenger vehicles with suitable
29 hand baggage compartments to provide ample suitable passenger vehicles necessary to perform the required interstation passenger and hand baggage transfer service for all the Coupon holders arriving on all the incoming trains of all Terminal Lines within the limited time available therefor to permit all such Coupon holders to continue their through transportation on their scheduled outgoing trains. Such minimum requirement involves knowledge of all the pertinent facts and circumstances in the communities in which the Terminal Lines and their connecting carriers serving Chicago through them operate, and of all the pertinent facts and circumstances in the operation of each and all of the Terminal Lines and of each and all of such connecting carriers, which influence the volume of through passengers traveling through Chicago as a junction point via the same or different participating Terminal Lines through the same or different terminal stations, within the same day or on different days in the same or different week, month or year.

Practically none of these pertinent facts and circumstances are available to the Commissioner and/or the City Council, and the criteria prescribed by Section 28-31.1 for the determination of the necessity for additional terminal vehicles do not, and can not, make such pertinent information available to the Commissioner and the City Council for that purpose.

The exercise of such power by the Commissioner and City Council under such circumstances arbitrarily
30 limits the maximum number of available vehicles available for the required interstation passenger transfer service for the through passengers of the Terminal Lines to the number of terminal vehicles now licensed, without regard to their suitability, or availability for their intended purpose, and to such additional number of terminal vehicles which the Commissioner and the City Council may in their sole discretion determine without regard to the factual basis upon which such discretionary determin-

ation must be predicated, to permit the Terminal Lines to carry out, within the limited time available therefor, the interstation passenger and baggage transfer service which they are required by law to provide with due regard for the safety and convenience of their through passengers and the security of their hand baggage.

(b) Section 28-6 of the Ordinance provides as follows:

"28.6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year."

31 This Section confers on the Commissioner the sole discretion to select the class of persons and the individuals within that class, to operate the instrumentalities of interstate commerce which the Terminal Lines must use to perform their required passenger transfer service, thereby limiting the number and character of the passenger motor vehicles and the number and qualifications of the operators of such equipment available to the Terminal Lines to perform the interstate transfer service which they are required by law to provide.

16. Plaintiffs have no adequate remedy at law. Should the Ordinance be enforced against Transfer, as heretofore alleged in paragraphs 4 and 13 of this Complaint, each of the more than 115 drivers of Transfer's passenger motor vehicles will be subject to arrest for violation of the Ordinance on each day of operation of such vehicles under the Agency Contract. Such arrests will seriously disrupt the required interstation passenger and hand baggage

transfer service within the limited time available therefor, and will prevent Transfer from performing its required passenger and hand baggage service as Agent for the Terminal Lines for their through interstate passengers in accordance with the time schedules for through interstate passenger service of the Terminal Lines. Such interruption of Transfer's passenger and hand baggage transfer service for through service passengers will result in the disruption of the through interstate passenger service of the Terminal Lines; and such interruption in turn will precipitate a multiplicity of litigation against the Terminal Lines by their through passengers in the Courts and before the Interstate Commerce Commission for the breach by the Terminal Lines of their tariff obligations to provide such service.

Wherefore, plaintiffs pray this Honorable Court to:

(A) Grant a temporary restraining order, without notice, pending the hearing and determination of the application hereinafter made for a preliminary injunction, because of the fact, as alleged herein, that irreparable loss and damage will result to plaintiffs unless such temporary restraining order be granted; and

(B) Grant a preliminary injunction pending a final determination of this case, restraining said defendants, their officers, agents, servants, employees, and attorneys, from enforcing or attempting to enforce said Ordinance against said Railroad Transfer Service, Inc., plaintiff herein, and the named Terminal Lines, plaintiffs herein, their officers, agents, servants or employees; and

(C) Declare that Chapter 28 of the Municipal Code of Chicago (the Ordinance herein involved) is inapplicable to Railroad Transfer Service, Inc., plaintiff herein, and to the named Terminal Lines, plaintiffs herein, for which it is acting as agent in the operation of the passenger vehicles herein involved; or, in the alternative, to declare that said Ordinance is void as applied to said Plaintiffs; and

(D) Perpetually enjoin the defendants; their officers, agents, servants, employees and attorneys, from enforcing or attempting to enforce said Ordinance against Railroad Transfer Service, Inc., plaintiff herein, and the named Terminal Lines, plaintiffs herein, their officers, agents, servants or employees; and

(E) Grant plaintiffs such other and further relief as may seem just in the premises.

The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Wabash Railroad Company;

By Benjamin F. Goldstein,

Amos M. Mathews,

Their Attorneys,

Railroad Transfer Service, Inc.,

By Benjamin F. Goldstein,

Albert J. Meserow,

Its Attorneys.

34 State of Illinois, }
County of Cook. } ss.

H. B. Siddall, being first duly sworn, on oath deposes and says that he is Vice-Chairman, Western Passenger Association, and the duly authorized agent of the Plaintiff Terminal Lines for the purpose of making this affidavit; that he has read the above and foregoing Complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

H. B. Siddall.

Subscribed and sworn to before me this 24th day of October, 1955, A.D.

Mary Streit,
Notary Public.

(Notary Seal)

Q

35 State of Illinois, }
County of Cook. } ss.

Alex Baxter, being first duly sworn, on oath deposes and says that he is the Secretary and General Manager of the Plaintiff Railroad Transfer Service, Inc. and its duly authorized agent for the purpose of making this affidavit; that he has read the above and foregoing Complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Alex Baxter.

Subscribed and sworn to before me this 24th day of October, 1955, A.D.

Mary Streit,
Notary Public.

(Notary Seal)

Exhibit A.

This Agreement, made as of the first day of October, 1955, by and between the following railroads (hereinafter referred to as "Terminal Lines"):

The Atchison, Topeka and Santa Fe Railway Company
The Baltimore and Ohio Railroad Company
The Chesapeake and Ohio Railway Company
Chicago & Eastern Illinois Railroad Company
Chicago and North Western Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway Company
Chicago, Indianapolis and Louisville Railway Co.
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago North Shore and Milwaukee Railway
Chicago, Rock Island and Pacific Railroad Company
Chicago South Shore and South Bend Railroad
Erie Railroad Company
Grand Trunk Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
The New York Central Railroad Company
The New York, Chicago and St. Louis Railroad Co.
The Pennsylvania Railroad Company
Wabash Railroad Company

and the following named corporations (hereinafter referred to as "Depot Companies") which are owners of certain railroad terminal facilities in Chicago:

The Baltimore and Ohio Chicago Terminal Railroad Company
Chicago and Western Indiana Railroad Company
Chicago Union Station Company

by their duly appointed Agent, Mr. E. B. Padrick, with offices in Room 436 Union Station, 516 West Jackson Boulevard, Chicago 6, Illinois, Parties of the First Part, and Railroad Transfer Service, Inc. (hereinafter referred to as "Transfer"), a Delaware corporation, with its principal office at 400 West Kinzie Street, Chicago 10, Illinois, Party of the Second Part.

The twenty-one (21) railroads listed above (hereinafter referred to as "Terminal Lines") have filed tariffs for through passenger service (hereinafter referred to as "through service"), from points outside to points beyond Chicago on or reached via the incoming and outgoing participating Terminal Lines and steamship lines, and for the delivery of baggage to or from any terminal station, and any point within the area described in Appendix A attached hereto (hereinafter referred to as the "terminal area"): The terminal station of each of the Terminal Lines is located in some one (1) of eight (8) terminal railroad stations located in the downtown area of Chicago (hereinafter referred to as "terminal station"), in which downtown area are located also the steamer docks. Three (3) of the terminal stations are used by one (1) railroad; five (5) other terminal stations have from two (2) to four (4) railroads each; and one (1) terminal station has six (6) railroads. The relative location of the eight (8) terminal stations and the steamer docks makes the use of motor vehicle transportation desirable for passenger and baggage transfer between terminal stations whenever the railroads involved are not located in the same terminal station, and between the terminal stations and the steamer docks.

Under applicable tariffs, transportation for through service includes any required passenger and baggage transfer from the terminal station in Chicago of the incoming line (hereinafter referred to as "incoming station") to the terminal station in Chicago of the outgoing line (hereinafter referred to as "outgoing station") and from the incoming station to the steamer dock of the outgoing steamer (hereinafter referred to as "outgoing dock") and from the steamer dock of the incoming steamer (hereinafter referred to as "incoming dock") to the outgoing station, and is applicable only for the Terminal Lines and the steamship lines which by separate agreement adopt the terms of this Agreement applicable to them.

The Terminal Lines have found it desirable to provide a transfer service between terminal stations in Chicago, and between said stations and steamer docks.

Transfer has been organized for the purpose of entering into this Agreement. Transfer is ready, willing and able to perform all the required passenger and baggage trans-

fer services specified in this Agreement, all intended to relieve the passenger of the responsibility for caring for the required passenger and baggage transfer in Chicago, and to provide for his passenger transfer, within the limited time available therefor, motor vehicle transportation, with the safety, convenience and comfort generally accepted as an incident of passenger automobile transportation normally available for that purpose; and Transfer has offered to perform all such services upon the terms and conditions and for the charges and collections set forth in this Agreement.

Now, Therefore, It Is Mutually Agreed, as follows:

Passenger and Hand Baggage Transfer Service.

1. Transfer agrees to furnish and perform the following services (hereinafter collectively referred to as "Passenger and Hbaggage Transfer Service"); Hand baggage, also referred to as Hbaggage, as used herein, means baggage that is moved with the passenger, not under check in baggage car service.

(a) To transport in a passenger vehicle the passenger with, or without, accompanying Hbaggage from incoming station or incoming dock to outgoing station or outgoing dock shown on coupon, upon delivery of coupon for cancellation to Transfer's agent at the incoming station or incoming dock, as the case may be.

(b) A passenger traveling in a wheelchair, otherwise qualified, shall become qualified for the Passenger and Hbaggage Transfer Service if his condition is such as to permit him to be transported in regular service.

(c) A passenger who is traveling on a litter or stretcher shall not be qualified for the Passenger and Hbaggage Transfer Service.

2. Transfer shall furnish and perform the Passenger and Hbaggage Transfer Service in accordance with the following:

(a) A time schedule shall be established and maintained seven (7) days per week. Such schedule shall be determined and established in accordance with the incoming and outgoing train schedules with the approval of the Terminal Lines in conference with Transfer. Transfer's agents shall be on duty at each terminal station during periods of transfer.

39 (b) Transfer shall determine the route or routes for this service, and insofar as reasonably practical, such routes shall permit the most expeditious service between the terminal stations involved.

(c) Transfer shall furnish and operate a sufficient number of suitable passenger vehicles to carry out this service. All such vehicles shall have ample accommodations for conveniently and safely carrying its passengers and their accompanying Hbaggage. Air conditioning shall be installed and maintained in these passenger vehicles. These vehicles shall be maintained in a clean, safe and sanitary condition. Passenger equipment used by Transfer in any service under this Agreement will be replaced by Transfer with new equipment within thirty (30) months after the commencement of its use. If, in the opinion of Transfer, there is a need for a different type of vehicle, and such vehicle is acceptable to the Terminal Lines, the period of replacement of such type of vehicle will be arranged through mutual agreement between Transfer and the Terminal Lines. Equipment other than passenger equipment used by Transfer in this service will be replaced by Transfer as necessary or desirable for high-grade service.

(d) Insofar as it may be reasonably practical, passenger and his Hbaggage shall be transported in the same passenger vehicle, having due regard for the safety, comfort and convenience of such passenger and the security of such Hbaggage. To the extent that the passenger vehicle does not have adequate space available for transporting the passenger and all his Hbaggage, his excess Hbaggage shall be transported in another vehicle to his outgoing station or outgoing dock so as to make possible the departure of such passenger and all his Hbaggage on the same scheduled outgoing train or outgoing steamer.

(e) All of Transfer's personnel assigned to this service shall wear appropriate uniforms while on duty in this service.

(f) Transfer reserves the right, and shall have the sole right and discretion:

40 (1) To transfer en route passenger and/or his accompanying Hbaggage from one to another of its vehicles, as operating conditions may require;

(2) To refuse to accept for transport in such service any prospective passenger for this service otherwise qualified, and/or to remove any passenger of through service.

in any case where such passenger is under the influence of intoxicating liquors or drugs or is incapable of taking care of himself:

(3) To determine whether, and under what conditions, a household pet as defined in applicable tariffs, which under said tariffs may be brought into the passenger's train space, shall be allowed to accompany him to his place in the passenger vehicle, instead of being placed in the space therein allowed for Hbaggage transport;

(4) To the extent determined by Transfer to be reasonably practical and economically sound, to provide in co-operation with the Terminal Lines involved, special passenger transfer equipment and special services to accommodate passengers traveling in groups, such as athletic teams, show troupes or other groups traveling under special arrangements with such Terminal Lines, and to provide for these groups adequate service and to meet the special conditions surrounding the travel of these special groups; and in the absence of agreement between Transfer and the Terminal Lines involved, such Terminal Lines may make arrangements with others for such special passenger equipment and special services.

3. Transfer shall be entitled to receive compensation computed in accordance with the following schedule for service rendered by it under the Passenger and Hbaggage Transfer Service, which shall be paid by the applicable outgoing Terminal Line or outgoing steamship line, as the case may be:

Schedule of Charges.

Coupons.

(a) Transfer shall be entitled to receive for each cancelled coupon delivered by it to the Terminal Line shown thereon serving the outgoing station, and the Terminal Line handling the passenger from the outgoing station shall be obligated to pay Transfer therefor, a sum of money equal to the applicable per-coupon rate shown in the following schedule:

Military Personnel on Furlough.

(1) For each cancelled coupon shown thereon to have been issued in connection with a valid ticket covering a fare applicable to military personnel on furlough, as passengers—

Applicable Per Coupon Rate, \$0.85.

No change shall be made in that rate except by mutual consent.

Adults.

(2) For each cancelled coupon shown thereon to have been issued in connection with a valid ticket covering a valid fare applicable to adult passengers (other than military personnel on furlough), and showing on the face of such coupon that it was cancelled at a date falling within the consecutive twelve (12) month period (hereinafter referred to as "year") indicated below, following the commencement date of this service, the applicable per-coupon rate shall be the indicated per-coupon rate for that numbered year, as follows:

Year	Applicable Per Coupon Rate
1.....	\$1.20
2.....	1.22
3.....	1.23
4.....	1.25
5.....	1.27

Children.

(3) Children under five (5) years of age accompanied by parent or guardian shall be carried free of charge. For each cancelled coupon shown thereon to have been issued in connection with the ticket covering a fare to a child five (5) years of age or over, as the passenger, the applicable per-coupon rate shall be:

- (aa) fifty per cent (50%) of the current coupon rate applicable to adult fares under paragraph 3 (a) (2) hereof, if the child's fare is for a child passenger five (5) years of age or over, but under twelve (12) years of age; and
- 42 (bb) one hundred per cent (100%) of the current coupon rate applicable to adult fares under paragraph 3 (a) (2) hereof, if the child's fare is for a child passenger twelve (12) years of age or over.

Special Fare Coupons.

(4) The applicable per-coupon rate for each cancelled coupon shall not be changed without mutual consent of Transfer and the Terminal Lines to give effect to the fact either that

(aa) the transportation to which such coupon related covers a group passenger fare rate for the through service involved which is less than the applicable regular passenger fare for the same through service; or

(bb) the passenger to whom such cancelled coupon relates was traveling under special quotation to government agencies.

Additional Special Service Compensation.

(5) In any case where, at the request of a Terminal Line, this service is rendered to a group of passengers involving the use of special baggage equipment to permit the members of the group to meet another train during such period, such as a baseball club, Transfer shall be entitled to receive from the requesting Terminal Line as additional compensation Five Dollars (\$5.00) per hour for each special vehicle for baggage transfer used.

(b) Transfer shall be entitled to receive for each cancelled coupon delivered by it to the outgoing steamship line shown thereon serving the outgoing dock, and the steamship line handling the passenger from the outgoing dock shall be obligated to make payment to Transfer therefor, in accordance with the same schedule of charges specified in paragraph 3 (a) above applicable between Transfer and the applicable outgoing Terminal Line for similar service to the outgoing station.

4. The Passenger and Hbaggage Transfer Service shall commence when the arriving passenger presents himself and his Hbaggage to Transfer for transportation by Transfer, and shall terminate when such passenger is delivered to his outgoing station or outgoing dock and his Hbaggage is delivered to him.

Baggage Car Baggage Transfer Service.

5. Transfer agrees to furnish and perform the following services (hereinafter referred to as "Baggage Car Baggage Transfer Service"):

(a) Transfer's services with respect to such Baggage

Car Baggage Transfer Service shall be to perform during the normal working day established under paragraph 6 (c) hereof, the following services:

(1) To check, bill and manifest (hereinafter referred to as "clerical operations") in the baggage room of each incoming Terminal Line, all incoming baggage articles which that Terminal Line makes available for that purpose (hereinafter referred to as "Unserviced Baggage") to Transfer at a designated space in the baggage room of that Terminal Line commonly known as the Baggage Dock.

(2) To load on its own trailer at the baggage room all such Unserviced Baggage on which such clerical operations had been so performed (hereinafter referred to as "Serviced Baggage") by its employee or employees.

(3) To transport these loaded trailers from the baggage room of the incoming station to the baggage room of the designated outgoing station and there unload them.

(4) To transport these loaded trailers to the steamer docks of the designated steamship line and there unload and deliver the baggage to the said steamship line.

(5) To perform at the steamer dock of each incoming steamship line, clerical operation with respect to Unserviced Baggage, as defined above, which that steamship line makes available to Transfer for that purpose, and there to load the Serviced Baggage on its trailers and to transport these loaded trailers therefrom to the baggage room of the designated outgoing station and there unload them.

6. Transfer shall perform the said Baggage Car Baggage Transfer Service in accordance with the following:

44 (a) Checked baggage covered by this service shall include all such items transported under check for a passenger.

(b) Transfer shall furnish and operate a sufficient number of vehicles suitable to perform the service hereunder.

(c) Transfer shall perform all operations hereunder on a seven (7) day per week basis between the hours of 8:00 A. M. and 5:00 P. M. CST of the same day (hereinafter and hereinafter referred to as "working day") to permit four (4) baggage transfers each day from each terminal station.

(d) Human remains, as defined in applicable tariffs, shall be transported from the baggage room of the re-

questing incoming Terminal Line to the baggage room of the outgoing station; and for that purpose Transfer shall use passenger equipment or its trailers specially adapted for such use, or other suitable equipment.

7. Transfer shall be entitled to receive compensation computed in accordance with the following schedule, from the applicable outgoing Terminal Line or outgoing steamship line, as the case may be, for services performed by it under the Baggage Car Baggage Transfer Service:

Schedule of Charges.

(a) Checked baggage, as defined in paragraph 6 (a) above:

(1) In any case where Transfer has received payment from the outgoing Terminal Line for a cancelled coupon under paragraph 3 (a) hereof, such payment shall be treated by that Terminal Line and by Transfer as payment to Transfer by such Terminal Line for Transfer's services rendered to it under the Baggage Car Baggage Transfer Service with respect to the checked baggage applicable to the through ticket of which the cancelled coupon was a part.

(2) In any case other than paragraph 7 (a) (1) hereof, the charge shall be an amount equal to the amount which Transfer is then currently entitled to receive for each cancelled coupon applicable to the through ticket of which the cancelled coupon was a part.

(3) Human remains moving on regular railroad tickets: two (2) coupons plus \$5.10.

45 (4) Human remains moving on tickets exchanged for Government Transportation Requests will be handled on the basis of two (2) coupons, this to include transfer of escort, so long as the present arrangement for such movement of human remains remains unchanged.

(b) Transfer shall be entitled to receive compensation from the applicable outgoing steamship line for services performed by it under the Baggage Car Baggage Transfer Service computed in accordance with the same schedule set forth in paragraph 7 (a) above applicable to each outgoing Terminal Line for the corresponding service.

Special Baggage Transfer Service.

8. Transfer agrees to furnish and perform the following services (hereinafter collectively referred to as "Special Baggage Transfer Service"):

(a) Subject to the conditions specified in paragraph 8 (b) (3) hereof, to accept baggage delivered by a passenger to Transfer's agent at incoming station for delivery to the parcel room of a designated outgoing station (hereinafter referred to as "PA Service").

(b) Transfer shall furnish and perform the Special Baggage Transfer Service in accordance with the following:

(1) The time schedule determined and established for the Passenger and Baggage Transfer Service pursuant to paragraph 2 (a) hereof shall constitute also the time schedule for the Special Baggage Transfer Service.

(2) In carrying on its operations under this Special Baggage Transfer Service, Transfer may use any vehicle or vehicles used in, or suitable for, any other service rendered by Transfer under this agreement, or any other vehicle suitable for the Special Baggage Transfer Service.

(3) PA Service baggage will be accepted for service hereunder for delivery to the outgoing station upon the presentation to Transfer of applicable coupon, plus the payment of 25¢ per piece of baggage, plus regular applicable parcel room charge for 24-hour service prevailing at the outgoing station. Such service will be available for all passengers up to three hours before scheduled departure of train from outgoing station. PA Service baggage of passengers requesting this service with delivery time of less than the three-hour period, may be accepted by Transfer in accordance with the above upon such conditions of acceptance as Transfer and the passenger may agree upon.

(4) Transfer shall obtain revenues for such services by billing in the usual manner to the outgoing Terminal Line for the coupon involved, and shall retain for itself 25¢ for each piece of baggage and shall remit to the outgoing station parcel room at time of delivery, charges collected for such service.

(5) The Special Baggage Transfer Service commences when the baggage involved therein is received by Trans-

fer's agent at the incoming station; and such service terminates when such baggage is delivered to the parcel room of the outgoing station.

Baggage Pickup and Delivery Service.

9. Transfer agrees to furnish and perform the following services (hereinafter collectively referred to as "Baggage Pickup and Delivery Service"), within the terminal area:

(a) To transport from any point in the terminal area to the unloading platform located in any outgoing station baggage of passenger intended for transport as checked baggage.

(b) To transport any incoming baggage of an incoming passenger from any incoming station to any destination in the terminal area.

(c) Transfer shall furnish and perform the Baggage Pickup and Delivery Service in accordance with the following:

(1) The normal working day determined and established for the Baggage Car Baggage Transfer Service pursuant to paragraph 6 (c) hereof shall constitute also the normal working day for the Baggage Pickup and Delivery Service.

(2) In carrying out its operations under this service, Transfer may use any vehicle or vehicles used in, or suitable for, any other service rendered by Transfer under 47 this Agreement, or any other vehicle suitable for the Baggage Pickup and Delivery Service.

(3) Outgoing baggage will be accepted by Transfer from the passenger and incoming baggage will be accepted by Transfer from the incoming Terminal Line in accordance with the applicable tariffs.

(d) Transfer shall be entitled to receive compensation computed in accordance with the following schedule for services rendered by it under the Baggage Pickup and Delivery Service, payment for which will be received by Transfer in accordance with paragraphs (d) (1), (2), and (3) hereunder:

(1) For incoming baggage delivered by Transfer to the designated address which was forwarded on prepaid delivery check issued by the originating carrier, Transfer shall be entitled to receive compensation for such service.

from the incoming Terminal Line in an amount equal to the applicable tariff charges for such service.

(2) For outgoing baggage delivered by Transfer to the outgoing station, Transfer shall be entitled to retain as its compensation for such service an amount equal to the applicable tariff charge for such service collected by Transfer from the passenger checking such baggage.

(3) Where the incoming baggage delivered by Transfer has been forwarded under collect delivery check, Transfer shall make collection for the account of the incoming Terminal Line of the applicable tariff charge upon making delivery of such baggage at the address of the incoming passenger and shall retain such charges as compensation for its services. Where the outgoing baggage delivered by Transfer to the outgoing station is forwarded under prepaid delivery check, Transfer shall make collection of the applicable tariff charge upon acceptance of the baggage from the passenger and shall retain therefrom the portion of such charge applicable under the tariff

to the movement from the place of pickup to the outgoing station as compensation for its services and shall deliver the balance of the collection to the outgoing Terminal Line at the time of delivery of the baggage to such Terminal Line.

(e). When baggage is delivered to Transfer by the passenger for transportation to an outgoing station, Transfer shall deliver to the passenger the appropriate baggage check under applicable tariffs upon presentation of proper transportation.

(f) For incoming baggage, Baggage Pickup and Delivery Service shall commence when it is delivered to Transfer for delivery to the passenger, and shall terminate when such baggage is delivered to the address designated in the claim check and the passenger's duplicate claim check for such baggage or in the absence thereof a written receipt therefor is procured by Transfer. For outgoing baggage, such service shall commence when it is delivered to Transfer for transport to the designated outgoing station, and shall terminate when such baggage is delivered to the unloading platform of such station and the appropriate receipt is secured therefor.

General Provisions.

10. Transfer agrees that:

(a) Transfer shall establish a radio control system and a central dispatch system at a centrally located site to provide control of movement and dispatch of vehicles used by it in the service under this Agreement, so as to fill the need for them at the time and place required for safe and efficient performance of the required service.

(b) Transfer shall establish a headquarters administration office in association with the central dispatch system office to provide suitable space for the administrative, financial and executive functions of Transfer.

(c) Commencing with the date when any transfer service under this Agreement shall start, and thereafter during the effective term of this Agreement, Transfer agrees to indemnify and save harmless the Terminal Lines and/or Depot Companies, and all steamship lines which by separate agreement shall adopt the terms of this Agreement, their respective officers, employees and agents, and to assume liability imposed by law on any of the parties hereto, for death of, injury to, any persons whomsoever, including, but not limited to, officers, employees, agents, patrons and licensees of the parties hereto, and liability imposed by law on any of the parties hereto for loss of or damage or injury to property, including, but not limited to, that belonging to the parties hereto, arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the acts or omissions, negligent or otherwise, of Transfer, its agents, servants or employees, together with all liability for any expenses, attorneys' fees and costs incurred or sustained by any or all of the Terminal Lines and Depot Companies and steamship lines in connection therewith. Transfer agrees also to release and indemnify and save harmless the Terminal Lines and/or Depot Companies, their respective officers, employees and agents, from all liability imposed by law on them to Transfer, its officers, employees and agents, for deaths or injury to persons and loss of or damage to property (including attorneys' fees, costs and expenses incurred therewith), resulting from railroad operations at or near the area in which operations under this Agreement are conducted, unless such liability results from the sole negli-

gence of the Terminal Lines and/or Depot Companies, their respective officers, employees or agents. Transfer, upon receipt of notice to that effect, shall assume the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section. Without in any manner restricting the extent of the obligations so assumed, Transfer agrees to procure for the additional protection of the Terminal Lines and the Depot Companies and steamship lines and keep in full force and effect at all times during the life of this Agreement 50 contractual-type insurance in form and with companies approved by the Terminal Lines and/or Depot Companies covering the risks and obligations assumed by it under this Agreement subject to all of the terms, conditions and exclusions of the basic policy contract not inconsistent with this Agreement, with full limits of One Million Dollars (\$1,000,000) to be maintained at all times; except as is otherwise provided as to amounts in paragraph 10 (c-1). Such insurance shall contain a provision that it may not be cancelled without thirty (30) days' notice in writing to Earl B. Padrick, Agent for Terminal Lines and/or Depot Companies, and during such thirty (30) days Transfer shall arrange to secure substitute coverage entirely satisfactory to the Terminal Lines and/or Depot Companies. All applicable tariff provisions of Terminal Lines and/or Depot Companies and steamship lines shall inure to the benefit of Transfer.

(c-1). As respects cargo insurance coverage on baggage, Transfer agrees to procure for the additional protection of Terminal Lines and/or Depot Companies and steamship lines, and keep in full force and effect at all times during the life of this Agreement, cargo insurance on baggage and with companies approved by the Terminal Lines and/or Depot Companies covering the risks and obligations assumed by it under this Agreement subject to all of the terms, conditions and exclusions of the basic policy contract, not inconsistent with this Agreement with limits of Fifty Thousand Dollars (\$50,000) per truck or vehicle and Two Hundred Fifty Thousand Dollars (\$250,000) per catastrophe coverage to be maintained at all times. Such insurance shall contain a provision that it may not be cancelled without thirty (30) days' notice in writing to Earl B. Padrick, Agent of Terminal Lines and/or Depot Companies, and during such thirty (30) days Transfer

shall arrange to secure substitute coverage entirely satisfactory to the Terminal Lines and/or Depot Companies. All applicable tariff provisions of Terminal Lines shall inure to the benefit of Transfer.

51 (d) Transfer shall carry Workmen's Compensation and Employers' Liability Insurance to cover Illinois State requirements.

(e) All employees of Transfer shall be covered by Indemnity Bond Insurance.

(f) Appropriate certificates covering all insurance herein shall be delivered by Transfer to the Terminal Lines, Depot Companies, and steamship lines.

(g) All equipment used in the service of Transfer shall be maintained in good repair and capable of performing the transportation service for which it was intended, with safety, efficiency, comfort and convenience to the passengers and to the personnel participating therein; and to the extent considered practical or advisable to construct and equip any semi-trailer with suitable electrical connection equipment and construction to permit connection with suitable wall plugs in the surrounding station area where the semi-trailer is placed, for lighting purposes, to permit operation within the interior of the semi-trailer without the use of tractor power.

(h) Transfer shall create and maintain practices and facilities, including preventative equipment and reserve equipment, to assure that Transfer's equipment used under this Agreement will be at all times in first-class condition and appearance, and that such equipment and the necessary personnel for rendering services therewith will be adequate in amount and number and will be available at the time and place required to provide efficient performance of the services intended for them under this Agreement.

(i) Transfer shall maintain the corporate name "Railroad Transfer Service, Inc."

(j) The color of equipment and any signs or designations appearing on such equipment will be subject to mutual agreement between Transfer and the Terminal Lines.

(k) A copy of the Annual Audit of Transfer as of the end of each of its fiscal years, certified by the certified
52 public accountants employed by Transfer in the regular course of its business, will be delivered by Transfer to the Agent of the Terminal Lines within thirty (30) days after such Annual Audit is completed.

(1) Transfer shall comply at all times with all laws, rules and regulations of governmental agencies having jurisdiction over it, and/or the services performed hereunder.

11. The parties hereto mutually agree that:

(a) Transfer shall not be liable for delays caused by accidents, breakdowns, bad conditions of road, snowstorms and other conditions beyond its control. Transfer does not guarantee to arrive at, or depart from, any terminal station or steamer dock at any specified time, other than to use its best efforts to carry out the operations required for the performance of its service under this Agreement so as not to prevent the departure of the passenger and his baggage at the departure time which he otherwise would meet.

(b) All forms of receipts, manifests and billings adopted for use in the services covered by this Agreement shall be approved by all parties to this Agreement.

(c) All services of Transfer under this Agreement shall commence on the earliest of the following dates (hereinafter referred to as "Service Commencement Date"): October 1, 1955, or a prior date specified in a written request by Agent of the Terminal Lines to Transfer to commence such service, which is delivered to Transfer at least twenty-four (24) hours before such specified date.

(d) The term of this Agreement shall be from the Service Commencement Date, as indicated in paragraph 11(c), to and including September 30, 1960.

(e) During the effective term of this Agreement, the type and character of service, and the charge therefor as provided in this Agreement, shall not be affected in any manner in the event that at any time or times there shall be a decrease in the through passenger transportation service of the Terminal Lines, or in the required
53 passenger and baggage transfer service between terminal stations.

(f) Transfer shall employ and direct all persons performing any service hereunder and such persons shall be and remain its sole employees and subject to its sole control and direction, it being the intention of the parties that Transfer shall be and remain an independent contractor. Transfer agrees to conduct the work provided for herein in its name and agrees not to display the name of any of the Terminal Lines upon or about any of its vehicles.

(g) The procedure for the settlement of accounts shall be as determined by the parties before the commencement of the service.

12. The Terminal Lines and Depot Companies and steamship lines which by separate agreement adopt the terms of this Agreement agree that:

(a) The Terminal Lines and Depot Companies and steamship lines grant to Transfer, without charge on account thereof, the exclusive right and privilege insofar as the Terminal Lines and Depot Companies and steamship lines can legally do so, commencing with the Service Commencement Date and thereafter during the effective term of this Agreement, to solicit the transportation of passengers holding coupons in and around the terminal stations and steamer docks and on the surrounding premises.

(b) Commencing with the Service Commencement Date, and thereafter during the effective term of this Agreement, the Terminal Lines and Depot Companies and steamship lines will permit only equipment and signs of Transfer on their properties or on the terminal properties for the purposes outlined in this Agreement.

(c) Commencing with the Service Commencement Date and thereafter during the effective term of this Agreement, space in each terminal station will be allocated without charge to Transfer for use at the headquarters of its passenger agent and baggage agent.

13. It is the intention of the parties to, and the purpose of, this Agreement that:

(a) To the maximum extent possible, the entire field of passenger and baggage transportation as outlined in this Agreement between all terminal stations and steamer docks where transfer between them is required in the through passenger transportation service of the Terminal Lines, shall be adequately and satisfactorily serviced and shall be serviced exclusively by Transfer; and

(b) The trade name "Railroad Transfer Service" as a baggage transport service, and Transfer as a baggage transport enterprise, shall be identified in the minds of all incoming and outgoing passengers of the Terminal Line using the terminal stations, as the sole and exclusive baggage transport service and enterprise on which the Terminal Lines rely, and in which they place their con-

fidence for prompt, safe, satisfactory and economical baggage transportation service, whenever required between any terminal stations and steamer docks in Chicago. To carry out this intention, the parties agree that:

(1) In the event that any situation, other than those enumerated above in paragraph 8 hereof, shall arise which shall require the use of Transfer's Special Baggage Transfer Service or for the handling of which the use of such service is suitable, the Terminal Lines and Transfer shall co-operate to make use of such service of Transfer upon mutually satisfactory terms.

(2) To the maximum extent possible, the Terminal Lines:

(aa) will refer and recommend that passengers on all their incoming trains avail themselves of the baggage transfer service of Transfer to transport any incoming train baggage from any terminal station to any destination in the terminal area;

(bb) will refer and recommend any inquiries by any persons in the terminal area with respect to a transfer agency to transport to a departing terminal station baggage intended for transportation by the Terminal Lines using such terminal station to avail themselves of the baggage transfer service of Transfer.

(c) Transfer shall give first priority to the use of its vehicles assigned to Baggage Car Baggage Transfer Service for the transfer of baggage intended for transport through Transfer's services under this Agreement.

55 14. Transfer agrees that it will not assign this Agreement, or any rights under it, to any other person, firm or corporation, without the express written permission of the Terminal Lines and Depot Companies, or their Agent acting on their behalf.

In witness whereof the parties hereto have executed this Agreement as of the day and year first above written by their representatives and Transfer has affixed its corporate seal.

Terminal Lines and Depot Companies.

By: E. B. Padrick,

Their Agent.

Railroad Transfer Service, Inc.

By: J. L. Keeshin,

Its President.

Appendix A.

The "terminal area" shall consist of the area within the corporate limits of:

Alsip	Lansing
Argo	Lincolnwood
Bedford Park	Lyons
Bellwood	Markham
Berkeley	Maywood
Berwyn	McCook
Blue Island	Melrose Park
Broadview	Midlothian
Brookfield	Morton Grove
Burnham	Niles
Calumet City	Northbrook
Calumet Park	Northfield
Chicago	North Lake Village
Chicago Heights	North Riverside
Chicago Ridge	Oak Forest
Cicero	Oak Lawn
Crestwood	Oak Park
Des Plaines	Palos Heights
Dixmoor	Palos Park
Dolton	Park Forest
East Hazel Crest	Park Ridge
Elmwood Park	Phoenix (Cook County)
Evanston	Rhodes
Evergreen Park	Rivertdale
Fairview (Cook County)	River Forest
Flossmoor	River Grove
Forest Park	Riverside
Forest View	Robbins
Franklin Park	Schiller Park
Glencoe	Skokie
Glenview	South Holland
Golf	Stickney
Harvey	Stone Park
Hazel Crest	Summit (Cook County)
Hillside	Techny
Hodgkins	Thornton
Homewood	Westchester
Hubbard Woods	Western Springs
Justice	Willow Springs
Kenilworth	Wilmette
La Grange	Winnetka
La Grange Park	Worth

Journal—City Council—Chicago—July 26, 1955

New Regulations Prescribed for Operation of Terminal Vehicles Within City.

The Committee on Local Transportation, to which had been referred (June 16, 1955, page 577) a proposed ordinance to prescribe regulations for the operation of terminal vehicles, submitted a report recommending that the City Council pass the substitute proposed ordinance transmitted therewith reading as follows:

Be It Ordained by the City Council of the City of Chicago:

Section 1. Section 28-1 of the Municipal Code of Chicago is amended by striking the definition of "Terminal vehicle" contained therein and substituting therefor the following:

"Terminal vehicle" means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in Section 28-31.

Section 2. Section 28-31 of said code is amended to read as follows:

28-31 Terminal Vehicles) Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship docks to destinations in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaines Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan.

Section 3. Chapter 28 of said code is amended by adding two new sections after Section 28-31 as follows:

28-31.1 Public Convenience and Necessity) No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in Section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommended the number of such vehicle licenses which may be issued.

67 In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. The public demand for such service;
2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;
3. The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;
4. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner.

28-31.2 Local Fares) The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided that children under 12 years of age, when accompanied by an adult, shall be carried at not more than half fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner.

Section 4. This ordinance shall be effective upon its passage and due publication.

On motion of Alderman Sheridan the committee's recommendation was concurred in and said substitute proposed ordinance was passed, by yeas and nays as follows:

Yeas—Aldermen D'Arco, Metcalfe, Holman, Despres, Jones, Bohling, Johnson, DuBois, Pacini, Nowakowski, Zelezinski, Egan, Burke, Micek, Sheridan, Murphy, McGrath, McKiernan, Campbell, Bonk, Janousek, Tourek, Deutsch, Marzullo, Bieszczat, Sain, Petrone, Pigott, Ronan, Keane, Prusinski, Brandt, Geisler, Laskowski, Cilella, Corcoran, Cullerton, Buckley, Simon, Immel, Bauler, Burmeister, Weber, Young, Hoellen, Freeman, Hartigan, Sperling—48.

Nays—None.

Alderman Cullerton moved to reconsider the foregoing vote. The motion was lost (Alderman Bohling voting "Yea").

Central Station—11th Place and Michigan Avenue.
 Illinois Central Railroad Company.
 The New York Central Railroad Company.

Dearborn Station—Polk and Dearborn Streets.
 The Atchison, Topeka and Santa Fe Railway Company.
 Chicago & Eastern Illinois Railroad Company.
 Chicago, Indianapolis and Louisville Railway
 Company.
 Erie Railroad Company.
 Grand Trunk Western Railroad Company.
 Wabash Railroad Company.

Grand Central Station—Harrison and Wells Streets.
 The Baltimore and Ohio Railroad Company.
 The Chesapeake and Ohio Railway Company.
 Chicago Great Western Railway Company.
 Minneapolis, St. Paul & Sault Ste. Marie Railroad
 Company.

LaSalle Station—LaSalle and VanBuren Streets.
 Chicago, Rock Island and Pacific Railroad Company.
 The New York Central Railroad Company.
 The New York, Chicago and St. Louis Railroad
 Company.

Union Station—Canal and Adams Streets.
 Chicago, Burlington & Quincy Railroad Company.
 Chicago, Milwaukee, St. Paul & Pacific Railroad
 Company.
 Gulf, Mobile and Ohio Railroad Company.
 The Pennsylvania Railroad Company.

North Western Station—Canal and Madison Streets.
 Chicago and North Western Railway Company.

Chicago, North Shore and Milwaukee Station—223
 South Wabash Avenue
 Chicago North Shore and Milwaukee Railway.

Chicago, South Shore and South Bend Station—Ran-
 dolph Street and Michigan Avenue.
 Chicago South Shore and South Bend Railroad.

69 And on the same day, to wit, the 24th day of October, 1955 came the Plaintiff by their attorneys and filed in the Clerk's office of said Court their certain Motion for Temporary Restraining Order and Affidavits of H. B. Siddall and Alex Baxter in words and figures following, to-wit:

70 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—56-C-1883) *

MOTION FOR A TEMPORARY
RESTRAINING ORDER.

Plaintiffs, by their attorneys, move this Court, upon the verified complaint heretofore filed in this cause and upon the affidavits of H. B. Siddall and Alex Baxter, attached hereto as Exhibits "A" and "B" respectively and by specific reference incorporated herein the same as if completely set forth verbatim herein, for a temporary restraining order against the defendants in the above captioned cause and each of them, their agents, servants, officers, employees, attorneys and all acting by, through or for them or on their behalf, pending the hearing and decision of plaintiffs' motion for a preliminary injunction, enjoining and restraining them from enforcing or attempting to enforce Sections 28-1 through 28-32 inclusive of the Municipal Code of Chicago, commonly known as the "Public Passenger Vehicle" Ordinance, against the plaintiff,

Railroad Transfer Service, Inc., and the plaintiff Terminal Lines named in the aforementioned complaint, their officers, agents, servants and employees, and otherwise interfering with or hindering the operation of the plaintiff terminal lines through their agent, Railroad Transfer Service, Inc., in performing transfer service between the various railway terminals located in the City of Chicago, County of Cook, and State of Illinois.

Plaintiffs further move said temporary restraining order be issued forthwith and without notice for the reason that as set forth in detail in said verified complaint and Exhibits A and B attached to this motion, immediate and

irreparable injury, loss and damage will otherwise result to the plaintiffs and their passengers.

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CEntral 6-7577

Benjamin F. Goldstein,

Amos M. Mathews,

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Benjamin F. Goldstein,

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Albert J. Meserow,

*Attorneys for plaintiff,
Railroad Transfer Service, Inc.*

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Exhibit A.

State of Illinois }
County of Cook } ss

H. B. Siddall, being first duly sworn, on oath deposes and says as follows:

Affiant is the Vice-Chairman of the Western Passenger Association, and, as a result of his experience in such capacity, is fully familiar with the through railroad passenger transportation service carried on through the Chicago junction point by the twenty-one railroads having passenger terminals in the loop area of Chicago. Affiant is also familiar with the nature and characteristics of passenger transportation by railroad in the United States. On the basis of such knowledge and experience, affiant states as follows:

Twenty-one railroads operate passenger transportation service from and to more than 50,000 points in the United States, either over their own lines, or via connecting carriers, to and from eight terminals located in or closely adjacent to the loop area of Chicago. Three types of passengers use the services of these twenty-one lines: (1) passen-

gers whose rail journey begins at Chicago, Illinois; (2) passengers whose rail journey ends at Chicago, Illinois; and (3) passengers whose rail journey begins and ends at points outside of Chicago, but who pass through Chicago during the course of such journey and do not interrupt their through journey in Chicago. Since none of the terminal lines pass through Chicago, it is necessary that the services of two such terminal lines be employed in completing the journey through Chicago for this class of passengers.

Such through transportation is accomplished by means of a railroad ticket composed of a series of coupons, purchased at the passenger's point of origin and covering his complete transportation to his destination; the passenger makes a single payment to the origin carrier for such transportation. This group of passengers is further divided into two sub-classes: (a) those who move through Chicago via incoming and outgoing carriers located in the same terminal, and (b) those who move through Chicago via incoming and outgoing carriers located in different terminals. (hereinafter called "Transfer Passengers"). This latter sub-class consists of approximately 3,900 passengers per day, approximately 99% of whom are traveling between origin and destination points located in different states. Because of the location of the eight passenger terminals heretofore referred to, the only practical method of providing for the transfer of the Transfer Passengers from the incoming terminal to the outgoing terminal is by means of motor vehicle, equipped to carry such passengers and their accompanying hand baggage simultaneously.

Transportation for these Through Passengers is sold over particular routes, designated on the tickets, and for particular connections between trains at the junction points, the routing being chosen by the passenger from among the available alternatives. Normally, the Through Passenger desires to accomplish his journey within the time between incoming and outgoing trains in Chicago, reduced to a minimum, and such transportation is usually designed to route the Transfer Passenger from Chicago to his destination via the first train scheduled to depart therefrom after his incoming train is scheduled to arrive. Moreover, in many instances, transfers at other junction points are also involved after the Transfer Passenger leaves Chicago. These subsequent transfers are also calculated to.

delay the Transfer Passenger for the minimum amount of time at the subsequent junction point.

The terminal lines are required by law to provide the through transportation heretofore described, and to provide reasonable and proper facilities for the interchange of passengers between their respective terminals. To provide such facilities between the terminals in Chicago, the twenty-one Chicago Terminal Lines have entered into a contract, effective from October 1, 1955 to September 30, 1960, with Railroad Transfer Service, Inc. to provide such service as the agent of the Terminal Lines. The service to be provided under the aforesaid contract is designed to satisfy the distinctive requirements of the Through Passengers, and thus to enable the railroads to fulfill the obligations imposed on them by law.

Any interruption to Transfer's service which would cause the Through Passengers to miss their connections would result in (a) delays in the Through Passenger's journey until the next available outgoing train, either over the same or another terminal line; (b) possible disruption of the schedule of connections at various points between Chicago and the Through Passenger's ultimate destination; and (c) inconvenience to the Through Passenger arising out of the fact that the desired type of railroad car accommodations (often reserved in advance) might not be available on the later, outbound train which would have to be substituted for the outbound train originally scheduled.

In addition to the injury to the passenger arising out of the purpose of his journey (loss of business opportunity, missing of an opportunity to see friends and relatives and other similar consequences) an interruption in service heretofore mentioned would subject the passenger to the additional inconvenience and expense of having to arrange for alternative outgoing transportation and having to maintain himself in Chicago until the time such alternative outgoing train departed.

The car-consist of inbound and outbound trains by the terminal lines is planned to accommodate the normal volume of traffic moving by each train which their experience has taught them to anticipate. Any disruption in Transfer's service would require adjustments in the car-consist of the alternate outbound trains as well as the expense of operating equipment on the scheduled trains for which

anticipated passengers were not available. In addition, the necessary rerouting of passengers would involve the extra expense of rewriting tickets and arranging for accommodations on the alternate train substituted for the outgoing train originally scheduled.

Terminal Lines' through transportation is competitive, in many instances, with other forms of transportation, and the effects of a disruption of Transfer's service, as heretofore mentioned, would result in a loss of good will toward the Terminal Lines and could result in the diversion of its passenger traffic to other forms of transportation.

Affiant makes this affidavit for the purpose of inducing the United States District Court for the Northern District of Illinois, Eastern Division, to grant a temporary restraining order, without notice, restraining the defendants in the above-captioned cause from enforcing the "Public Passenger Vehicle" Ordinance of the City of Chicago (Mun. Code of Chicago, Sec. 28-1 through Sec. 28-32, both inclusive) against the plaintiffs in said cause.

Further affiant sayeth not.

H. B. Siddall.

Subscribed and sworn to before me this 24th day of October, 1955 A. D.

Mary Streit,
Notary Public.

77

Exhibit B.

State of Illinois, }
County of Cook, } ss.

Alex Baxfer, first being duly sworn, on oath states as follows:

1. Affiant is Secretary and General Manager of Railroad Transfer Service, Inc. (hereinafter referred to as "Transfer").

2. Transfer devotes all of its sixty (60) passenger motor vehicles owned by it and the one hundred fifteen (115) drivers employed for that purpose, exclusively for use in the operation of the passenger and hand baggage transfer service between the eight (8) terminal stations in the downtown area of Chicago to transfer the through pas-

sengers of the twenty-one (21) Terminal Lines arriving at any one of these stations enroute to another city, with, or without, hand baggage, from their incoming stations to their outgoing stations shown on their through tickets, upon their delivery of the transfer coupons issued in connection therewith for cancellation to Transfer's Agent at the incoming stations. This interstation passenger and hand baggage service is performed by Transfer as Agent for the Terminal Lines, pursuant to the Agency Contract between Transfer and the said twenty-one (21) Terminal Lines using these eight (8) terminal stations, among other things, for their through transportation service:

3. Transfer's passenger vehicles do not accept non-78 Coupon holders as passengers, and confine the interstation passenger and hand baggage transportation for Coupon holders exclusively between their incoming and outgoing terminal stations. The passenger and hand baggage transfer service of each vehicle commences at the incoming terminal station where the Coupon holder becomes a passenger of Transfer's passenger vehicle and terminates at the outgoing terminal station where the Coupon holder and his hand baggage are delivered.

4. Transfer's operation of these passenger vehicles is conducted on a seven (7) day per week daily time schedule, established and maintained in accordance with the incoming and outgoing train time schedules during the twenty-four (24) hours per day time schedule. The time available for the interstation passenger and hand baggage transfer by Transfer's passenger vehicles is limited by the time interval between the scheduled or actual arrival time of the incoming train on which the Coupon holder arrives and the scheduled or actual departure time of the outgoing train on which that Coupon holder departs in the continuation of his through transportation.

In many cases this time interval is so short that an interruption of a few minutes in the departure of Transfer's passenger vehicle from an incoming station or en route to the designated outgoing station or in the unloading of the Coupon holders and their hand baggage at the outgoing terminal station could cause such through passenger and/or his hand baggage to miss the outgoing train on which 79 they were scheduled to depart:

On or about 3:00 P. M., October 20, 1955, Transfer was notified by the Chicago, Burlington & Quincy Railroad

Company that 193 soldiers of the United States Army were arriving on one of its trains at the Union Station from a far western state under military orders, and that it was necessary to have these soldiers with their accompanying hand baggage transported from that station to the North Western Station within an eighteen (18) minute time schedule between the arrival time of that train and the scheduled departure time of the outgoing train on which they were ordered to proceed to their destination point. To effect this interstation transfer, it was necessary to make use of ten (10) passenger vehicles in addition to the passenger vehicles scheduled for use at that time for the interstation transfer of Coupon holders with accompanying hand baggage in the regular course of Transfer's interstation transfer service under the Agency Contract. The interstation transfer service of these 193 soldiers was carried out by Transfer within the limited available time therefor, without any time whatsoever to spare. This experience is illustrative of many situations where tight limited available time schedules for interstation transfer service by the use of Transfer's passenger vehicles to meet connecting trains occur daily.

The arrest or receipt of a Summons by a driver of Transfer's passenger vehicle while on duty on a repetitive basis or by a number of such drivers on duty at any one time could easily result in the destruction of the morale of such driver or drivers and in the disruption of Transfer's service through the loss of the services of such driver or drivers who would seek employment elsewhere, and could render Transfer helpless in securing replacements.

The nature of Transfer's interstation transfer business and the unpredictable number of Coupon holders at any one or more incoming stations requiring the interstation passenger and hand baggage transfer services of Transfer, and the narrowness of the time interval between connecting train schedules, are such that the loss of service of a single driver on duty at any of the many peak periods during the day could result in many Coupon holders missing their outgoing train connections.

The circumstances surrounding the arrest and service of Summons on a driver on duty for violation of the Ordinance at a time or times when Coupon holders are traveling in, or boarding or departing from, the passenger vehicle

of Transfer involved could easily cause such delay in delivering such passengers to their outgoing stations as to cause them to miss their outgoing train connections, and could easily cause such embarrassment and inconvenience to the passengers of the vehicle involved as to permanently destroy the good will of Transfer's operations as an inter-station transfer agent of the Terminal Lines, and even permanently destroy the good will of the Terminal Lines' through transportation service via Chicago as a junction point.

81 5. The attendance of the drivers in the Courts in defense of the suits by Transfer at the expense of Transfer and with the resulting loss of their services as drivers of its passenger vehicles required for the inter-station transfer service under the Agency Contract would result in complete destruction of the scheduled operations of Transfer required by it under the Agency Contract and necessary for the effective through transportation service via Chicago. Based on its experience to-date, the minimum time which would be required to train a new driver to become an efficient Transfer passenger vehicle driver is ten (10) days.

The extra financial burden to Transfer resulting from the above factors and from the defense of the multiplicity of suits during the time interval required for a final determination of the issues involved in relation to the fixed per Coupon charges to which Transfer is entitled for its services under the Agency Contract, might make it necessary for Transfer either to seriously curtail its transfer services or abandon them entirely.

Alex Baxter.

Subscribed and sworn to before me this 24th day of October, 1955, A. D.

(Notary Seal)

Mary Streit,
Notary Public.

82 And on the same day to wit, on the 24th day of October, 1955, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy, District Judge, appears the following entry, to wit:

83 IN THE UNITED STATES DISTRICT COURT.
* * (Caption--55-C-1883) * *

TEMPORARY RESTRAINING ORDER.
NOTICE AND ORDER TO SHOW CAUSE.

It appearing to the Court from the verified complaint herein and from the motion and supporting affidavits heretofore filed herein by the plaintiffs that a temporary restraining order, preliminary to a hearing upon a motion for injunction, should issue without notice because the defendants will, unless restrained, enforce the "Public Passenger Vehicle Ordinance" of the City of Chicago (Mun. Code of Chicago, Secs. 28-1 through 28-32, inclusive) against the Plaintiff Railroad Transfer Service, Inc. and, consequently, against the plaintiff railroads named in the complaint herein, and such enforcement will disrupt the transfer of railroad passengers between the various terminal stations located in the City of Chicago, thereby disrupting the flow of railroad passengers moving through said city in the course of interstate transportation;

And it further appearing that there is danger of such action taking place before notice can be served and a hearing had on plaintiffs' motion for a temporary injunction;

And it further appearing that the damages from the aforementioned actions cannot be wholly estimated,
84. calculated or compensated for in money, and that such damages will be immediate, substantial and irreparable;

Now, Therefore, It Is Hereby Ordered that the defendants, City of Chicago, a municipal corporation, Richard J. Daley, Mayor of said city, John C. Melaniphy, Acting Corporation Counsel of said city, Timothy J. O'Connor, Police Commissioner of said city, and William P. Flynn, Public Vehicle License Commissioner of said city, and their agents, officers, servants, employees and attorneys,

and any persons acting in concert with or participating with them, and any and all persons acting, by, with, through or under them, or by or through their order, be, and they hereby are, restrained until the 28th day of October 1955 at 2:00 p. m. o'clock M., unless this order be extended beyond said time or dissolved prior thereto, from enforcing or attempting to enforce Sections 28-1 through 28-32, inclusive, of the Municipal Code of Chicago (commonly known as the "Public Passenger Vehicle" Ordinance) against the plaintiff Railroad Transfer Service, Inc., and the plaintiffs, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Chicago and Eastern Illinois Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, Chicago, Indianapolis and Louisville Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago North Shore and Milwaukee Railway, Chicago Rock Island and Pacific Railroad Company, Chicago South Shore and South Bend Railroad, Erie Railroad Company, Grand Trunk Western Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company and the Wabash Railroad Company, or against the officers, agents, servants or employees of each of the aforesaid plaintiffs.

85 **It Is Further Ordered** that the defendants, and each of them, appear before this Court in the United States Court House in the City of Chicago, Illinois, on October 28th, 1955 at 10:06 o'clock A. M., and show cause, if any they have, as to why this restraining order should not be continued or made permanent in accordance with the prayers of the complaint heretofore filed herein.

It Is Further Ordered that a copy of this notice and order, together with a copy of the complaint, be served by the United States Marshal on the defendants forthwith.

This order issued at 11:00 o'clock A. M. this 24th day of October, 1955 A. D.

Walter J. LaBuy,

United States District Judge.

Chicago, Illinois.

86 And afterwards on, to wit, the 27th day of October, 1955 came the Parmelee Transportation Company, by its attorneys and filed in the Clerk's office of said Court its certain Motion to Intervene in words and figures following, to wit:

87 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption--55-C-1883) * *

MOTION OF PARMELEE TRANSPORTATION COMPANY TO INTERVENE AS A DEFENDANT.

Parmelee Transportation Company, a Delaware Corporation, by Lee A. Freeman, its attorney, moves for leave to intervene as a defendant in this action as a matter of right or in the alternative in the court's discretion under Rules 24 (a) and 24 (b) of the Federal Rules of Civil Procedure, in order to assert its rights and interest as set forth in its Intervening Petition, a copy of which is hereto attached.

Parmelee Transportation Company,
a corporation,

By Lee A. Freeman,

Its Attorney.

Lee A. Freeman,
208 S. LaSalle Street,
Chicago, Illinois,
CE. 6-1763.

Attorney for Intervenor.

88 And on the same day, to wit, the 27th day of October, 1955 came the Parmelee Transportation Company by its attorneys and filed in the Clerk's office of said Court its certain Petition to Intervene in words and figures following, to wit:

89 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—55-C-1883) * *

**PETITION OF PARMELEE TRANSPORTATION
COMPANY TO INTERVENE AS A DEFENDANT.**

Your petitioner, Parmelee Transportation Company, a corporation, by Lee A. Freeman, its attorney, petitions for leave to intervene as party defendant in this action as a matter of right or in the alternative in the court's discretion under Rules 24 (a) and 24 (b) of the Federal Rules of Civil Procedure and as grounds therefor states:

1. Parmelee Transportation Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is duly qualified to do business in the State of Illinois. For more than 102 years last past, petitioner and its predecessors were engaged and petitioner is now engaged in the business of transporting passengers and baggage for hire in the Chicago terminal area.

90 2. At all times, petitioner conducted its operations in compliance with all ordinances of the city of Chicago and in particular Chapter 28 of the Municipal Code of Chicago. Pursuant to the requirements of Chapter 28 of the Municipal Code of Chicago petitioner applied for public passenger vehicle licenses, demonstrated its financial responsibility, the adequacy of its insurance coverage, the dependability of its drivers, the adequacy and safety of the vehicles proposed to be used in said terminal service and in these and in all other respects duly complied with the requirements imposed by the city of Chicago in the regulation of the use of public streets and ways by public passenger vehicles. After investigation by the public vehicle license commissioner, annual licenses were duly issued covering all of petitioner's motor vehicles proposed for use and used in its public passenger terminal service. These annual licenses have been renewed from

year to year and are now in effect for each of the terminal vehicles used by petitioner in the rendition of its services.

3. Pursuant to the authorizations granted by the city of Chicago and in reliance upon the public passenger terminal licenses issued by the city of Chicago and still held by the petitioner, large expenditures of money have been made by applicant for properties, buildings, structures, equipment and facilities necessary for and used in the
91 conduct of such terminal operations. Petitioner's investment in such properties, buildings, structures, equipment and facilities exceeds \$2,000,000. Petitioner employs over 200 individuals to conduct its public passenger terminal services in Chicago and has developed a business that has developed a substantial transportation of passengers annually and created a goodwill of substantial value.

4. Co-plaintiff, Railroad Transfer Service, Inc. on October 1, 1955, commenced the operation of public passenger terminal services, transporting persons and baggage for hire from railroad terminal stations in Chicago to points within the Chicago terminal area, using the streets and public places of the city of Chicago. Co-plaintiff, Railroad Transfer Service, Inc. is conducting a public transportation service for hire on the streets and public places of the city of Chicago without the requisite Chicago public passenger vehicle licenses prescribed by ordinances of the city of Chicago.

5. Commercial operation of terminal vehicles as conducted by co-plaintiff, Railroad Transfer Service, Inc. has been regarded as essentially local and has been exempted from federal regulation, including regulations applicable to the safety of operations. The city of Chicago by
92 Chapter 28 of the Municipal Code of Chicago has prescribed reasonable controls in the exercise of its police power in order to assure the proper use of its streets for commercial operations and to promote public safety, health and welfare. The reasonable police power requirements of Chapter 28 of the Municipal Code of Chicago are properly applicable and enforceable against co-plaintiff, Railroad Transfer Service, Inc. with respect to its use and operation of public passenger vehicles in the terminal area of the city of Chicago as conducted since October 1, 1955.

6. Defendant has refused to comply and does refuse to comply with the provisions of Chapter 28 of the Municipal Code of Chicago and has generally taken the position that

its aforesaid commercial operations and its terminal vehicles employed therein cannot be licensed or regulated by the city of Chicago. Such operations by Railroad Transfer Service, Inc. without compliance with the reasonable police power requirements imposed by the city of Chicago are unlawful and unauthorized:

7. By reason of the unlawful, unauthorized and unwarranted operations of Railroad Transfer Service, Inc. as aforesaid, substantial interference with petitioner's duly licensed terminal services have been caused. Such operations by Railroad Transfer Service, Inc. have
93 created hazards relating to the safety of petitioner's drivers, vehicles and passengers and the safety of other drivers, vehicles, passengers and pedestrians using the public ways and places in the terminal area of the city of Chicago. Such unlawful, unauthorized and unwarranted operations have substantially and unfairly affected petitioner's business, have inflicted incalculable losses of revenues and profits, have resulted in serious injury to petitioner's goodwill and have severely hampered, impeded and obstructed your petitioner in its attempt to render adequate and lawful public passenger terminal services.

8. Petitioner has a substantial interest in questions of law and fact common to the issues presented in this proceeding and has a substantial interest in maintaining the applicability and validity of Chapter 28 of the Municipal Code of Chicago as it applies to the services performed and vehicles operated by said Railroad Transfer Service, Inc. A decision in these proceedings may materially and adversely affect petitioner's rights and petitioner may be bound thereby. The defendant, City of Chicago, cannot
or may not adequately represent petitioner's interest.

94 9. The complaint in this proceeding was filed on October 24, 1955 and hearings have been set for October 28, 1955 on plaintiffs' motion for a preliminary injunction. The petition for intervention is timely and no delay in these proceedings will be occasioned by the grant of this intervening petition.

Wherefore, petitioner, Parmelee Transportation Company, prays:

A. That it be permitted to intervene in this proceeding.

B. That this petition for intervention be considered and treated as an answer and claim of the intervening petitioner in these proceedings.

C. That the court enter a judgment, decree or order

finding and declaring that the operations by co-plaintiff, Railroad Transfer Service, Inc. of motor vehicles commercially over and upon the city streets and public places from railroad stations to destinations within the terminal area of the city of Chicago as conducted since October 1, 1955, constitutes the operation of public passenger terminal vehicles within the purview of Chapter 28 of the Municipal Code of Chicago and that co-plaintiff, Railroad

Transfer Service, Inc. is required to secure a public
95 passenger terminal vehicle license for each motor vehicle so used and employed and to comply with all reasonable police power requirements imposed by the ordinances of the city of Chicago upon public passenger vehicles and public passenger vehicle operators.

D. That pending the determination of the issues in this cause, the court issue a temporary injunction restraining and enjoining co-plaintiff, Railroad Transfer Service, Inc., its officers, agents, employees and attorneys from engaging in said public passenger terminal service until it has duly obtained the required public passenger terminal vehicle licenses from the city of Chicago to operate upon the streets and public places of the city of Chicago and has otherwise complied with all applicable ordinances of the city of Chicago.

E. That the court set this cause for trial and final hearing and upon the conclusion thereof, that said temporary injunction be made permanent.

F. That the court make such other findings and declaration of rights as may be necessary to adjudicate the controversy between the parties and grant such other temporary or permanent relief as may be necessary to effectuate such declaration of rights or to protect the rights
96 of the parties pending the adjudication of the controversy or to effectuate such declaration of rights and the terms of any order, judgment or decree that may be entered.

Parmelee Transportation Company,
a corporation

By Lee A. Freeman,

Its Attorney.

Lee A. Freeman,

Attorney for Petitioner,

208 S. LaSalle Street,

Chicago, Illinois,

CE 6-1763.

State of Illinois }
 County of Cook } ss.

Charles E. Rheintgen, being first duly sworn on oath deposes and says that he is Vice President of Parmelee Transportation Company, a corporation, Intervening Petitioner herein; that he has read the within and foregoing Petition, by him subscribed, that he knows the contents thereof and that the same is true in substance and in fact.

Charles E. Rheintgen.

Subscribed and sworn to before me this 26th day of October, 1955.

(Notary Seal)

Lilyan Fisher,
 Notary Public.

97 And afterwards, to wit, on the 28th day of October, 1955, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy District Judge, appears the following entry, to wit:

98 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1883) * *

ORDER EXTENDING TEMPORARY RESTRAINING ORDER.

This cause coming on now to be heard upon the rule to show cause why the relief prayed for in the complaint herein should not be granted, due notice of such hearing having been served upon the defendants herein, and the defendants, by their attorneys, having appeared in open court and having consented that the temporary restraining order entered by this Court be extended for the purpose of allowing additional time to prepare for hearing, and the Court being now fully advised in the premises:

It Is Hereby Ordered that the expiration date of the Temporary Restraining Order heretofore entered by this Court in the above-captioned cause on Monday, October 24, 1955 A. D. be, and the same hereby is, extended to Monday, November 7, 1955 A. D. at the hour of 2:00 P.M.

and that the defendants, and each of them, their agents, servants, employees, officers and attorneys, be restrained until November 7, 1955 at 2:00 P. M. according to the provisions of the aforesaid order of October 24, 1955, which said provisions are incorporated herein by reference as fully as if specifically set forth verbatim herein;

It Is Further Ordered that the defendants, and each of them, appear before this Court in the United States Court House in the City of Chicago, Illinois on November 7, 1955 at 10:00 o'clock A. M., and show cause, if any they have, as to why this restraining order should not be continued or made permanent in accordance with the prayers of the complaint heretofore filed;

It Is Further Ordered that the Bond heretofore filed in the above-captioned cause stand as the bond to secure the defendants during the period of this temporary restraining order as herein extended.

This order issued at 11:15 o'clock A. M., this 28th day of October, 1955 A. D.

Walter J. LaBuy,

United States District Judge.

Chicago, Illinois.

100 And afterwards, to wit, on the 7th day of November, 1955, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy District Judge, appears the following entry, to wit:

101 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1883) * *

**ORDER EXTENDING TEMPORARY
RESTRAINING ORDER.**

This cause coming on now to be heard upon the rule to show cause why the relief prayed for in the Complaint herein should not be granted, due notice of such hearing having been served upon the defendants herein, and the defendants, by their attorneys, having appeared in open court and having consented that the temporary restraining order entered by this Court be extended for the pur-

pose of allowing additional time to prepare for hearing, and the Court being now fully advised in the premises:

It Is Hereby Ordered that the expiration date of the Temporary Restraining Order heretofore entered by this Court in the above-captioned cause on Monday, October 24, 1955 A. D., and extended until November 7, 1955 A. D. at 2:00 P. M. by Order entered October 28, 1955 A. D., be, and the same hereby is, extended to Thursday, November 10, 1955 A. D., at the hour of 2:00 P. M., and that the defendants, and each of them, their agents, servants, employees, officers and attorneys, be restrained until November 17, 1955 at 2:00 P. M. according to the provisions 102 of the aforesaid order of October 24, 1955, which said provisions are incorporated herein by reference as fully as if specifically set forth verbatim herein;

It Is Further Ordered that the defendants, and each of them, appear before this Court in the United States Court House in the City of Chicago, Illinois on November 10, 1955 at 10:00 o'clock A. M., and show cause, if any they have as to why this Restraining Order should not be continued or made permanent in accordance with the prayers of the Complaint heretofore filed;

It Is Further Ordered that the Bond heretofore filed in the above-captioned cause stand as the bond to secure the defendants during the period of this Temporary Restraining Order as herein extended:

This Order issued at 2:00 o'clock P. M., this 7th day of November, 1955 A. D.

Walter J. LaBny,

United States District Judge.

Chicago, Illinois.

103 And afterwards on, to wit, the 10th day of November, 1955 there was filed in the Clerk's office of said Court a certain Memorandum in words and figures following, to wit:

104 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1883) * *

MEMORANDUM.

The complaint in the above cause requests the court to declare whether or not the "Public Passenger Vehicle Ordinance" purporting to license and regulate the operation of certain categories of public passenger vehicles for hire includes the operations of parties plaintiff; or in the alternative if the ordinance is held applicable that the court declare the same void as an attempt to regulate interstate commerce in the field in which Congress has already exercised its regulatory powers.

Parmalee Transportation Company has filed a petition to intervene in the above matter as a party defendant and requests intervention be granted as a matter of right or in the alternative that it be permitted to intervene in the court's discretion.

The petition to intervene alleges that Parmalee has at all times complied with the Ordinances of the City of Chicago and conducted its operations in compliance therewith; that it has expended large sums of money for properties, buildings, structures, equipment and facilities necessary in the conduct of such terminal operations and that the said investment exceeds two millica dollars plus goodwill of substantial value; that plaintiff, Railroad Transfer Service, Inc., is conducting a public transportation service for hire in Chicago without the requisite vehicle licenses prescribed by its ordinances; that the requirements of the ordinance are properly applicable and enforceable against Railroad Transfer Service, Inc., and its non-compliance therewith is unlawful and unauthorized; that by reason of such unlawful operations of Railroad Transfer

105 Service substantial interference with Parmalee's duly licensed terminal services has been caused; that such unauthorized operation has created hazards relating to the safety of Parmalee's drivers, vehicles and passengers and all other drivers, vehicles, passengers and pedestrians using the public ways in Chicago; that it has substantially

and unfairly affected petitioner's business, inflicted incalculable losses of revenues and profits, results in serious injury to Parmalee's good will and severely hampered, impeded and obstructed Parmalee in rendering adequate and lawful public passenger terminal service. It is alleged that Parmalee has a substantial interest in questions of law and fact common to the issues presented in the main proceeding and a substantial interest in maintaining the applicability and validity of the ordinance; that a decision in these proceedings may materially and adversely affect Parmalee's rights and it may be bound by the judgment herein. It is also alleged that the City of Chicago cannot and may not adequately represent Parmalee's interest.

Subdivision (2) of Rule 24(a) of the Federal Rules of Civil Procedure permits intervention as of right when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action. Thus, two elements are involved—that the representation of the applicant's interests by existing parties may be inadequate and that the petitioner for intervention may be bound by a judgment in the action. Both conditions must be shown to exist before intervention as of right is authorized.

The interest which will give rise to intervention as a matter of right must be a direct and legal interest and not one which is general and gives rise to no definite legal rights. It must be such an interest that the intervenor will either gain or lose by the direct legal operation of the judgment made. *Cyc. of Fed. Pro., Vol. 7, §24.12, page 16; Pyre Oil Co. v. Ross, (C. A. 7, 1948) 170 F. (2d) 650, 653.* It is apparently petitioner's theory that its investment, its goodwill and its continued normal operation of business constitute an interest over and beyond that of the defendant City of Chicago and that to protect such individual interest it should be allowed to intervene as a matter of right. It is contended by the parties plaintiff, however, that the "sphere of operations" of the plaintiff Railroad Transfer Service and petitioner Parmalee are not the same and that a judgment in the main action cannot affect the petitioner's status. Such a conclusion is not apparent from the facts which are presently before the court and the question of the right to intervene should only be decided on the posture of the pleadings as they now appear.

The interest disclosed by the petition to intervene is more akin to an interest which a taxpayer has in the effect of a tax law as to him and an interest that the law should be enforced equally as to all within its ambit. Such an interest has not been held to be sufficiently direct to permit intervention as of right particularly where the main action already raises the same issue and is being defended by proper governmental authority. The court recognizes that judgments involving legislative acts will of necessity affect all members within the designated categories of the law.

Conceding that the applicant Parmalee may be bound by a judgment in the main action, certainly there is no basis for assuming that the representation of the applicant's interest by the City is or may be inadequate. Representation by governmental authority is generally considered adequate in the absence of any specific showing to the contrary. The petition for intervention thereby alleges the conclusion that the defendant, City of Chicago, "cannot or may not adequately represent petitioner's interest". It is clear that the City's interest is so extensive with and not antagonistic to that of the petitioner and concededly its duty and interest in defending the operation and validity of the acts of its legislative council is even greater than that of the petitioner. Under the state of the record at present the court is of the opinion it has not been shown that the City of Chicago will not fully and properly represent the intervenor's interest.

Having determined that Parmalee does not have an absolute right to intervene, may it be premitted to intervene under subdivision (b) of Rule 24 "when an applicant's claim or defense and the main action have a question of law or fact in common"? The establishing of a claim or defense for purposes of permissive intervention is not dependent upon a "direct personal or pecuniary interest" in the litigation but more than a general interest in the subject matter is required. Parmalee's interest is reflected in the alleged injurious consequences to it of plaintiff's purported illegal disregard of the ordinance. The court is of the opinion that Parmalee has shown a degree of interest sufficient to permit its intervention under subdivision 107 (b) of Rule 24.

Rule 24 provides that in cases of permissive intervention the court "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Parmalee's petition does

Pages 9 and 10. Rule 13. Amend Item (a) in its entirety to read as follows:

RULE 13

TRANSFER ARRANGEMENTS

(a) Transfer at Chicago, Ill.

When fares published herein are used for constructing through fare from other points of origin via routes where transfer is required between rail depots or between rail depots and steamer docks at Chicago, the following charges will apply:

From Chicago Via Rail Lines

Note.—Transfer coupons may be included without charge in connection with Intermediate Class fares.

Item No.	Where the one-way first class fare from Chicago, Ill. to destination is:	Where the one-way coach fare from Chicago, Ill. to destination is:	Where transfer is required between stations at Chicago one-way fare including transfer will be established as follows:
1	♦\$1.78 or less.....	♦\$0.92 or less.....	♦\$1.20 must be added to cover transfer.
2	♦\$1.79 to \$2.98.....		Basing fare including transfer \$2.98.
3		♦\$0.93 to \$2.12.....	Basing fare including transfer \$2.12.
4	\$2.98 or more.....	\$2.12 or more.....	Transfer coupon may be included without charge.

Omnibus transfers are required in Chicago between all depots except the following lines occupying the same depots jointly.

Railroad	No Transfer to Following Lines	Location of Station	Name of Station
AT&SF.....	C&EI, CI&L, ErieRR, GT or Wab.....	Dearborn and Polk Sts.....	Dearborn.
B&Q.....	C&O, CGW or SooLine.....	Harrison and Wells Sts.....	Grand Central.
C&EI.....	AT&SF, CI&L, ErieRR, GT or Wab.....	Dearborn and Polk Sts.....	Dearborn.
C&NWSsystem.....	(Transfer to all other lines at Chicago).....	Madison and Canal Sts.....	North Western.
C&O.....	B&O, CGW or SooLine.....	Harrison and Wells Sts.....	Grand Central.
CB&Q.....	CMStP&P, GM&O or PRR.....	Jackson Blvd. and Canal St.....	Union.
CGW.....	B&O, C&O or SooLine.....	Harrison and Wells Sts.....	Grand Central.
CI&L.....	AT&SF, C&EI, ErieRR, GT or Wab.....	Dearborn and Polk Sts.....	Dearborn.
CMStP&P.....	CB&Q, GM&O or PRR.....	Jackson Blvd. and Canal Sts.....	Union.
CNS&M.....	(Transfer to all other lines at Chicago).....	223 So. Wabash Ave.....	
CRI&P.....	NYC (Chicago-Danville Line) NYC (Chicago-Niles Line, trains 8 and 17), NYC (Chicago-South Bend Line) or NickelPlate.....	La Salle and Van Buren Sts.....	La Salle.
CSS&SB.....	(Transfer to all other lines at Chicago).....	Randolph St. and Michigan Ave.....	Randolph St.
Erie.....	AT&SF, C&EI, CI&L, GT or Wab.....	Dearborn and Polk Sts.....	Dearborn.
GM&O.....	CB&Q, CMStP&P or PRR.....	Jackson Blvd. and Canal Sts.....	Union.
GT.....	AT&SF, C&EI, CI&L, ErieRR or Wab.....	Dearborn and Polk Sts.....	Dearborn.
IllCent.....	NYC (Chicago-Indianapolis Line) or NYC (Chicago-Niles Line).....	Roosevelt Rd. and Michigan Ave.....	Central.
NYC (Chicago-Danville Line).....	CRI&P, NYC (Chicago-Niles Line, trains 8 and 17) or NickelPlate.....	La Salle and Van Buren Sts.....	La Salle.
NYC (Chicago-South Bend Line).....			
NYC (Chicago-Indianapolis Line).....	IllCent, NYC (Chicago-Indianapolis Line) or NYC (Chicago-Niles Line).....	Roosevelt Rd. and Michigan Ave.....	Central.
NYC (Chicago-Niles Line).....	CRI&P, NYC (Chicago-Danville Line) NYC (Chicago-South Bend Line) or NickelPlate.....	La Salle and Van Buren Sts.....	La Salle.
NYC (Chicago-Niles Line, trains 8 and 17).....			
NickelPlate.....	CRI&P, NYC (Chicago-Danville Line), NYC (Chicago-Niles Line, trains 8 and 17) or NYC (Chicago-South Bend Line).....	La Salle and Van Buren Sts.....	La Salle.
PRR.....	CB&Q, CMStP&P or GM&O.....	Jackson Blvd. and Canal St.....	Union.
SooLine.....	B&O, C&O or CGW.....	Harrison and Wells Sts.....	Grand Central.
Wab.....	AT&SF, C&EI, CI&L, ErieRR or GT.....	Dearborn and Polk Sts.....	Dearborn.

From Chicago Via Steamer Lines

Item No.	Where transfer is between rail depot and steamer dock the following charges will apply:
5	One-way transfer charge of ♦\$1.20 and round-trip transfer charge of ♦\$2.40 must be added in all cases.
	♦ Increase. • Reduction.

not disclose issues which differ from those presented, by the complaint. It does not appear that delay or prejudice will ensue by virtue of its presence in this suit, and in fact this consideration is not discussed or urged by those opposing the petition.

Since it appears to the court that this intervenor's right is based upon the presence of a question of law or fact in common with the main action, the determination of jurisdiction becomes important. In Moore's Federal Procedure, Second Edition, Volume 4, page 137, the jurisdictional requirements on intervention are stated as follows:

"Intervention under an absolute right or under a discretionary right in an in rem proceeding need not be supported by grounds of jurisdiction independent of those supporting the original action. Intervention in an in personam action under a discretionary right must be supported by independent grounds of jurisdiction, except when the action is a class action."

In the instant case, the complaint presents the issues of whether the City of Chicago has properly exercised its powers, whether the City has unduly interfered with interstate commerce, and whether the ordinance applies to plaintiff's operations. Jurisdiction is alleged to exist because of the presence of a federal question. These same issues are presented in the petition to intervene and are the basis for this court's jurisdiction over Parmalee. The petitioner is not making any claim or seeking any personal judgment against the opposing parties which would require a jurisdictional basis different from that presented by the complaint and contained in the petition.

108 The court is of the opinion that permission should be granted to Parmalee Transportation Company to intervene in the above proceedings. An order in accord therewith has this day been entered.

/s/ Walter J. La Buy,

Judge, United States District Court.

Nov. 10, 1955

Haight, Goldstein & Haight
209 South La Salle Street,

Joseph Grossman, Esquire,
c/o Corporation Counsel, City of Chicago,
City Hall,

Lee A. Freeman, Esquire,
208 South La Salle Street.

110 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-C-1883) • •

TRANSCRIPT OF PROCEEDINGS.

had on the hearing of the above-entitled cause before the Honorable Walter J. LaBuy, one of the Judges of said Court, in his court room, in the United States Court House, at Chicago, Illinois, on November 10, 1955, at 10:20 o'clock a.m.

199 Mr. Meserow: May we file an affidavit setting up the Council proceedings?

The Court: You may.

Mr. Freeman: I suppose it should be the full Council proceedings, because otherwise I may want to file additional affidavits.

Do you want to file the full transcript?

200 Mr. Meserow: You can. I will file what I read in Court today.

The Court: The intervenor's brief will be in by 12 o'clock on Tuesday; the reply brief will be in 10 o'clock on Friday.

202 And on the same day, to wit, on the 10th day of November, 1955, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy District Judge, appears the following entry, to wit:

203 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-C-1883) • •

This cause coming on for disposition of the motion of Parmelee Transportation Company for leave to intervene as defendant and for hearing on the plaintiff's motion for defendants to show cause why restraining order should not be continued or made permanent come the parties by their counsel and upon due consideration the Court being fully advised in the premises it is

Ordered that the motion of Parmelee Transportation Company to intervene be and the same hereby is sustained and the Court now having heard the arguments of counsel on the plaintiff's motion for a rule to show cause why a restraining order should not be continued or made permanent said motion hereby is taken under advisement and it is

Further Ordered that leave be and hereby is granted to Parmelee Transportation Company to file brief on or before noon, November 15, 1955 and that leave be and hereby is granted to the plaintiff to reply on or before November 17, 1955:

248 And on the same day, to wit, on the 10th day of November, 1955, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy District Judge, appears the following entry, to wit:

249 IN THE UNITED STATES DISTRICT COURT.
 * * (Caption—55-C-1883) * *

ORDER EXTENDING TEMPORARY RESTRAINING ORDER.

This cause coming on now to be heard upon the rule to show cause why the relief prayed for in the Complaint herein should not be granted, and all parties having appeared in open court and having consented that the temporary restraining order entered by this Court be extended until the Court enters an order disposing of the application for preliminary injunction, and the Court being now fully advised in the premises:

It Is Hereby Ordered that the expiration date of the Temporary Restraining Order heretofore entered by this Court in the above-captioned cause on Monday, October 24, 1955 A. D., and extended until November 10, 1955 A. D., at 10:00 P. M. by Order entered November 7, 1955 A. D., be, and the same hereby is, extended until the Court enters an order disposing of the application for preliminary in-

junction; and that the defendants, and each of them, their agents, servants, employees, officers and attorneys, be restrained as aforesaid according to the provisions of the aforesaid order of October 24, 1955, which said provisions are incorporated herein by reference as fully as if specifically set forth verbatim herein;

250 It Is Further Ordered that the Bond heretofore filed in the above-captioned cause stand as the bond to secure the defendants during the period of this Temporary Restraining Order as herein extended.

This Order issued as of 2:00 o'clock P.M., this 10th day of November, 1955 A.D.

/s/ Walter J. La Buy,

United States District Judge.

Chicago, Illinois.

286 And afterwards on, to wit, the 17th day of November, 1955 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion for Summary Judgment in words and figures following, to wit:

287 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—55-C-1883)

MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT.

Now come the defendants City of Chicago, a municipal corporation, Richard J. Daley, as Mayor of said City; John C. Melaniphy, Acting Corporation Counsel of said City; Timothy J. O'Connor, as Commissioner of Police of said City and William P. Flynn, as Public Vehicle License Commissioner of said City, defendants, by John C. Melaniphy, Acting Corporation Counsel and Joseph F. Grossman, Special Assistant Corporation Counsel of the City of Chicago, attorneys for said defendants and move the court for a summary declaratory judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure to determine:

1. Whether plaintiff, Railroad Transfer Service, Inc., is a public utility under the laws of Illinois; ..

2. Whether said plaintiff, by virtue of its contract with plaintiff railroad companies, is operating its vehicles within the city of Chicago exclusively as agent for and in behalf of plaintiff railroads as public utilities under the laws of Illinois;

3. Whether said plaintiff's operations are confined to the transportation of passengers on through route railroad and steamship transportation tickets between points outside of the corporate limits of the city in intrastate 288 and interstate commerce;

4. Whether said plaintiff operates any vehicle on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, as provided in Section 23-2 of the Municipal Code of Chicago;

5. Whether said plaintiff is operating terminal vehicles within the city of Chicago, as defined in Section 28-1 of the Municipal Code of Chicago, as amended July 26, 1955;

6. Whether any of said plaintiff's operations are in local transportation of passengers at rates of fare subject to Section 28-31.2 of the Municipal Code of Chicago, as amended July 25, 1955;

7. Whether any of said plaintiff's operations are subject to any of the provisions of Chapter 28 of the Municipal Code of Chicago. In support of said motion, defendants state that there is no genuine issue as to any material fact contained in the complaint and that these defendants are entitled to judgment as a matter of law whether Chapter 23 of the Municipal Code of Chicago, as amended July 26, 1955, is applicable to the operations of plaintiff, Railroad Transfer Service, Inc.

John C. Melaniphy,
Acting Corporation Counsel,

Joseph F. Grossman,
*Special Assistant Corporation
Counsel,
Attorneys for Defendants.*

290

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-C-1883) • •

TRANSCRIPT OF PROCEEDINGS

had on the hearing of the above-entitled cause before the Honorable Walter J. LaBuy, one of the judges of said court, in his courtroom in the United States courthouse at Chicago, Illinois, on November 17th, 1955, at 10:15 o'clock a. m.

292 Mr. Grossman: If the Court please, the City's meeting is due today and I have prepared and am filing a motion for summary, declaratory judgment, because there are no issues of fact involved. A contract is a part of the complaint. The ordinances of the City of Chicago are part of the complaint, and there is only one question of law involved, and that is whether the ordinances apply to the operations indicated by the contract which is a part of the complaint.

294 Now, this motion must be filed ten days before the hearing, and I am asking for a hearing to be set on this motion on November 28, 1955, under the rules of the Civil Practice Act, or under the rules of this Court or at such time, later time as is more convenient for the Court.

302 Mr. Grossman: Yes.

Mr. Freeman: Yes, he does..

Mr. Grossman: But the question is, does this ordinance apply?

Mr. Freeman: We have argued that too.

The Court: Well, it is the Court's view that the City should be permitted to file its motion, and the Court will consider the motion for the judgment in conjunction with the motion for a restraining order, and I don't see any reason why there has to be the delay that is referred to here. You are all familiar with the question and have submitted your briefs already on the pending motion. Now why can't you shorten the time?

Mr. Grossman: I am perfectly willing to shorten the time.

The Court: Your briefs could stand on this motion too, unless you have something further to add.

Mr. Goldstein: Well, there are some questions in here, and we suggested next Tuesday.

303 Mr. Freeman: That is all right with me.

Mr. Grossman: We wish to be excused from filing briefs.

Mr. Goldstein: When will you file your brief?

Mr. Freeman: I won't file any more brief. I filed mine.

The Court: You submit them by Monday and the Court will take it under advisement and notify counsel through memorandum.

360 And on the same day, to wit, the 21st day of November, 1955 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 1 (Affidavit of E. B. Padrick) in words and figures following, to wit:

361 IN THE UNITED STATES DISTRICT COURT.
(Caption—55-C-1883)

PLAINTIFFS' EXHIBIT NO. 1.

Affidavit of E. B. Padrick.

State of Illinois, }
County of Cook. } ss.

E. B. Padrick, being first duly sworn, deposes and states:

He is now and has been for seven (7) years Chairman of the Transcontinental Passenger Association and of the Western Passenger Association with offices at Room 436, Union Station Building, Chicago 6, Illinois. These are railroad rate conferences approved by the Interstate Commerce Commission under Section 5a of the Interstate Commerce Act. He is tariff publishing agent for various railroads, acting as such for issuing carriers under powers of attorney on file with the Interstate Commerce Commission and with the Illinois Commerce Commission.

362 Attached hereto as Exhibit A is a true and correct copy of rule No. 14 of joint passenger tariff No. 270, covering passenger fares for travel by railroad and rules and regulations relating thereto, Interstate Commerce Commission No. 4, issued by H. P. Bronson, Agent, on March 3, 1916, effective April 8, 1916, filed with the Interstate Commerce Commission.

Rule No. 14 provides for transfer between Chicago stations of passengers holding tickets for travel originating and terminating outside of Chicago and their hand baggage.

Attached hereto as Exhibit B is a true and correct copy of Rule No. 13, Item (a), of Supplement No. 6 to Chicago Joint Passenger Tariff No. 288-W, covering passenger fares for travel by railroad and rules and regulations relating thereto, Interstate Commerce Commission No. 5398, Illinois Commerce Commission No. 2033, issued by E. B. Padrick, Agent, on August 29, 1955, effective October 1, 1955, filed with the Interstate Commerce Commission and with the Illinois Commerce Commission.

Rule No. 13, Item (a), provides for transfer between Chicago Stations of passengers holding tickets for travel originating outside and terminating outside of Chicago and their hand baggage.

Before 1916, and ever since 1916, and to the present date, all railroad passenger tariffs covering sale of railroad tickets for travel originating outside and terminating outside of Chicago and passing through Chicago have
363 provided for transfer of passengers and their hand baggage in a manner similar to that shown in the said Exhibits A and B.

E. B. Padrick.

Subscribed and sworn to before me this 21st day of November, 1955.

(Notary Seal)

A. F. Hucksold,
Notary Public, Cook
County, Illinois.

364

Exhibit A.

Transfer at Chicago.

14. Where transfer is required in Chicago, all fares in excess of 75 cents, include transfer charge; when the fare is less than 75 cents, transfer charge of 50 cents shall be added, not to exceed a maximum basing fare of 75 cents, which includes transfer, except that—

Via Goodrich Transportation Co., or Graham & Morton Transportation Co., 50 cents should be added to the fares named herein in constructing through fares to cover transfer charge at Chicago, from railway depot to steamer dock. No addition is necessary account of transfer via Northern Michigan Transportation Co., or Northern S. S. Co.

Omnibus transfers are required in Chicago between all depots except between the following lines occupying the same depots jointly.

No transfer between:

Union Passenger Station, Corner Canal and Adams Streets.

Burlington Route.

Chicago, Milwaukee & St. Paul Ry.

Chicago & Alton R. R.

Pennsylvania Line (Pan Handle Route).

Pennsylvania Line (Fort Wayne Route).

No transfer between:

Dearborn Station, Corner Polk and Dearborn Streets.

Atchison, Topeka & Santa Fe Ry.

Chesapeake & Ohio Ry. Co. of Indiana.

Chicago & Eastern Illinois R. R.

Chicago, Indianapolis & Louisville Ry.

Erie R. R.

Grand Trunk Ry. System.

Wabash Railway.

365

No transfer between:

Central Station, Corner Park Row and Twelfth Street (Michigan Avenue).

Cleveland, Cincinnati, Chicago & St. Louis Ry.

Illinois Central R. R.

Michigan Central R. R.

No transfer between:

Grand Central Station, Corner Harrison Street and Fifth Avenue.

Baltimore & Ohio R. R.

Chicago Great Western R. R.

Minneapolis, St. Paul & Sault Ste. Marie Ry. (Soo Line).

Pere Marquette System.

No transfer between:

La Salle St. Station, Corner La Salle and Van Buren Streets.

Chicago, Rock Island & Pacific Ry.

New York Central R. R. (Line West of Buffalo).

New York, Chicago & St. Louis R. R.

367 And on the same day, to wit, the 21st day of November, 1955 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 2 (Affidavit of E. B. Padrick) in words and figures following, to wit:

368 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

PLAINTIFFS' EXHIBIT NO. 2.

Affidavit of E. B. Padrick.

State of Illinois, }
County of Cook. } ss.

E. B. Padrick, being first duly sworn, deposes and states:

Attached hereto are copies of letters written by him to the Interstate Commerce Commission and to the Illinois Commerce Commission, advising such Commissions: (1) of the discontinuance of arrangements for transfer service in Chicago between the Chicago terminal railroads and Parmelee Transportation Co., and (2) of the execution of the contract for such transfer service between the railroads and Railroad Transfer Service, Inc., for five years beginning October 1, 1955.

369 Copies of such contract were transmitted with such letters.

E. B. Padrick.

Subscribed and sworn to before me this 21st day of November, 1955.

(Notary Seal)

A. F. Hucksold,
Notary Public, Cook County,
Illinois.

370

Chicago Terminal Lines,
Room 436 Union Station,
516 West Jackson Boulevard,
Chicago 6, Illinois.

September 19, 1955.

Interstate Commerce Commission,
Washington 25, D. C.

Gentlemen:

On June 13, 1955, acting as agent for the twenty-one (21) Chicago Terminal Railroads handling passengers to, from, and through Chicago, I sent a letter to the Chairman of the Board, Parmelee Transportation Company, as follows:

"As agent for the Chicago Terminal Railways now doing business with you in connection with the transfer of passengers and baggage between stations in Chicago, I have been directed to inform you that, effective with the close of business, September 30, 1955, those railroads will no longer require the services of the Parmelee Transportation Company.

"I have also been directed on behalf of these railroads to inform you that if for any reason whatsoever there is a curtailment of service on the part of Parmelee Transportation Company prior to that time, your services will be terminated immediately."

On the same date, I wrote another letter to Mr. J. L. Keeshin, indicating that the twenty-one (21) Chicago Terminal Railroads would enter into a five-year contract with them, such letter reading as follows:

"As agent for the Chicago Terminal Railways that require the transfer of passengers and baggage between stations in Chicago, I have been directed to inform you that effective with the start of business October 1, 1955, those railroads will accept your proposal in principle.

"I have been directed to negotiate the proposed five-year contract with you, on behalf of the Chicago Terminal Railways, and it will be appreciated if you will furnish me with three copies of a draft of contract, after which, time we will be glad to go over it with you for any changes, additions, or deletions that might be necessary.

"I also understand that if, for any reason whatsoever, there is a curtailment of service on the part of the present operator, you are willing to establish service immediately.

371 "We shall be glad to work directly with you and assist all possible in ironing out any of the details with respect to your establishment of this service.

"Will you please acknowledge."

You will find attached, for your files, a copy of the agreement between Railroad Transfer Service, Inc., and the Chicago Terminal Railroads and Depot Companies.

Yours truly,

s/ E. B. Padrick,

Agent.

l/br/ac

Attachment.

372 Chicago Terminal Lines,
Room 436 Union Station,
516 West Jackson Boulevard,
Chicago 6, Illinois.

September 19, 1955.

Illinois Commerce Commission,
Springfield, Illinois.

Gentlemen:

On June 13, 1955, acting as agent for the twenty-one (21) Chicago Terminal Railroads handling passengers to, from, and through Chicago, I sent a letter to the Chairman of the Board, Parmelee Transportation Company, as follows:

"As agent for the Chicago Terminal Railways now doing business with you in connection with the transfer of passengers and baggage between stations in Chicago, I have been directed to inform you that, effective with the close of business, September 30, 1955, those railroads will no longer require the services of the Parmelee Transportation Company.

"I have also been directed on behalf of these railroads to inform you that if for any reason whatsoever there is a curtailment of service on the part of Parmelee Trans-

portation Company prior to that time, your services will be terminated immediately."

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"As agent for the Chicago Terminal Railways that require the transfer of passengers and baggage between stations in Chicago, I have been directed to inform you that effective with the start of business October 1, 1955, those railroads will accept your proposal in principle.

"I have been directed to negotiate the proposed five-year contract with you, on behalf of the Chicago Terminal Railways, and it will be appreciated if you will furnish me with three copies of a draft of contract, after which time we will be glad to go over it with you for any changes, additions, or deletions that might be necessary.

"I also understand that if, for any reason whatsoever, there is a curtailment of service on the part of the present operator, you are willing to establish service immediately.

"We shall be glad to work directly with you and assist all possible in ironing out any of the details with respect to your establishment of this service.

"Will you please acknowledge."

373 You will find attached, for your files, a copy of the agreement between Railroad Transfer Service, Inc., and the Chicago Terminal Railroads and Depot Companies.

Yours truly,
s/ E. B. Padrick,
Agent.

l/br/ac
Attachment.

374 And on the same day, to wit, the 21st day of November, 1955 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 3 in words and figures following, to wit:

375 **PLAINTIFFS' EXHIBIT NO. 3.**

An Ordinance

Granting Permission and Authority for the Operation of Terminal Vehicles Within the City of Chicago.

Be It Ordained By The City Council Of The City Of Chicago:

Section 1. Definitions. When used in this ordinance:

"City" means the City of Chicago.

"Commissioner" means the Public Vehicle License Commissioner of the City of Chicago, or any officer or officers vested by ordinance with authority to perform the function involved in the context in which the word is used.

"Licensee" means a qualified person, firm or corporation who has filed with the City Clerk formal written acceptance of this ordinance.

"Terminal vehicle" means a public passenger vehicle licensed as such which is operated exclusively for the transfer of passengers to and from terminal stations of railroad and steamship companies.

Section 2. Subject to all the conditions of this ordinance, exclusive permission and authority is hereby granted to the licensee to operate terminal vehicles in the City for a period of ten (10) years, commencing on _____, 1955, and ending on _____, 1965.

Section 3. Licensee shall be subject to all laws and ordinances relating to the operation of motor vehicles and the regulation of traffic, and all ordinances relating to public passenger vehicles affecting terminal vehicles, and all reasonable rules and regulations of the commissioner relating thereto.

Section 4. It is unlawful for any person to be an operator of one or more terminal vehicles on any public
376 **way from place to place within the corporate limits of the city unless such terminal vehicles are licensed**

by the City as terminal vehicles. No person shall be qualified for a terminal vehicle license and a taxicab license at the same time.

Section 5. Application for a terminal vehicle license shall be made in writing signed and sworn to by the applicant upon forms provided by the commissioner.

Section 6. No vehicle shall be licensed as a terminal vehicle until it has been inspected under the direction of the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers.

Section 7. In addition to motor vehicle taxes and inspection fees imposed by State law and City ordinances, licensee shall pay to the City quarterly in advance, on the first day of January, April, July, and October, dollars for each terminal vehicle as compensation for the use of city streets and other public ways by authority of this ordinance.

Section 8. Notwithstanding the requirements of any law or ordinance relating to the filing of bonds and policies of insurance against liability for injury to or death of any person, or for damage to property, by any person operating any terminal vehicle, licensee, as a prerequisite to the issuance of its license and the continuing validity of the same, shall carry public liability and property damage insurance and workmen's compensation insurance for his employees with solvent and responsible insurers approved by the commissioner, authorized to transact such insurance business in the State of Illinois, and qualified to assume the risk for the amounts hereinafter 377 set forth under the laws of Illinois, conditioned to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death, at any time resulting therefrom, sustained by any person arising out of the ownership, maintenance or use of any of licensee's terminal vehicles.

The public liability insurance policy or contract may cover one or more public passenger vehicles, but each vehicle shall be insured for the sum of at least five thousand dollars for property damage and fifty thousand dollars for injuries to or death of any one person, and one hundred thousand dollars for injuries to or death of

more than one person in any one accident. Every insurance policy or contract for such insurance shall provide for the payment and satisfaction of any final judgment rendered against the cabman and person insured, or any person driving any insured vehicle, and that suit may be brought in any court of competent jurisdiction upon such policy or contract by any person having claim arising from the operation or use of such vehicle. It shall contain a description of each public passenger vehicle insured, the manufacturer's name and number, the state license number and the public passenger vehicle license number.

In lieu of an insurance policy or contract a surety bond or bonds with a corporate surety or sureties authorized to do business under the laws of Illinois, may be accepted by the commissioner for all or any part of such insurance; provided that each bond shall be conditioned for the payment and satisfaction of any final judgment in conformity with the provisions of an insurance policy required by this section.

All insurance policies or contracts or surety bonds required by this section, or copies thereof certified by the insurers or sureties, shall be filed with the commissioner and no insurance or bond shall be subject to cancellation

except on thirty days' previous notice to the commissioner. If any insurance or bond is cancelled or permitted to lapse for any reason, the commissioner shall suspend the license for the vehicle affected for a period not to exceed thirty days, to permit other insurance or bond to be supplied in compliance with the provisions of this section. If such other insurance or bond is not supplied within the period of suspension of the license, the Mayor shall revoke the license for such vehicle.

Section 9. All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any terminal vehicle shall be paid by licensee within ninety (90) days after they shall become final and not stayed by supersedeas. This obligation is absolute and not contingent upon the collection of any indemnity from insurance carried by licensee.

Section 10. Licensee shall file with the commissioner an address in the City to which all notices required to be given to licensees under this ordinance may be addressed. All such notices shall be deemed good and sufficient for

all purposes when deposited in the United States mail properly addressed with first class postage prepaid.

Section 11. Upon the effective date of this ordinance the commissioner shall issue licenses hereunder to licensee in not to exceed the number of licenses held by such licensee on April 1, 1955. If, during the term of this contract ordinance additional service of the type provided by terminal vehicles becomes necessary, the commissioner shall notify licensee to provide such additional service and shall issue additional vehicle licenses to such licensee upon application therefor. The question of whether additional vehicles are necessary shall be determined by the commissioner only after a count of passengers at the terminals being served indicates a need for such additional vehicles.

379 Section 12. Within five (5) days after this ordinance shall become effective, and provided licensee has filed applications for the licensing of its terminal vehicles, and has satisfied all of the conditions of this ordinance, licensee may then file with the City Clerk an unconditional written acceptance of this ordinance. Upon such filing, this ordinance shall become effective as a contract between the City and the licensee for the term specified and thereupon the commissioner shall issue licenses as hereinbefore provided.

Section 13. The invalidity of any section or part of any section of this ordinance shall not affect the validity of any other section or part thereof.

Section 14. All of Sec. 28-31, and that portion of Sec. 28-1 and 28-7 defining or referring to "terminal vehicles," of Chapter 28 of the Municipal Code of Chicago, as amended December 20, 1951 and January 30, 1952, is repealed.

Section 15. This ordinance shall be effective upon its passage and approval.

Paul M. Shenedon,
Alderman, 16th Ward.

380 State of Illinois, }
County of Cook. } ss.

I, John C. Marcin, City Clerk of the City of Chicago in the County of Cook and State of Illinois, Do Hereby Certify that the annexed and foregoing is a true and correct copy of a proposed ordinance regulating the operations of terminal vehicles in the City of Chicago, referred to the Committee on Local Transportation by the City Council at its meeting held on the sixteenth (16th) day of June, A. D. 1955, which said proposed ordinance is filed with City Clerk's Document No. 454221 (ordinance passed by the City Council on the twenty-sixth (26th) day of July, A. D. 1955, prescribing new regulations for the operation of terminal vehicles within the City of Chicago).

I Do Further Certify that the original of said proposed ordinance is on file in my office and that I am the lawful custodian of the same.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of the City of Chicago aforesaid, at the said City, in the County and State aforesaid, this fifteenth (15th) day of November, A. D. 1955.

John C. Marcin,
City Clerk

(Seal)

381 And on the same day, to wit, the 21st day of November, 1955, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 4, in words and figures following, to wit:

382 PLAINTIFFS' EXHIBIT NO. 4.

Excerpt.

City Council.
Committee on Local Transportation.
City Hall,

July 21, 1955,

2:30 p. m.

383 Chairman Sheridan: Very well. We will proceed with the next matter on the agenda.

Item No. 2 is the proposed ordinance granting authority for and licensing the operation of terminal vehicles within the City of Chicago.

I want to say at this time for the benefit of the members of the Committee and all who are present that a few weeks ago, as Chairman of the Committee on Transportation, I was advised by the vehicle licensing commissioner that he had received a communication from the Parmelee Company who operate terminal vehicles in Chicago to serve the railroads, that the contract that existed between the railroads and Parmelee was to be cancelled out effective, I believe, sometime in September, so, as Chairman of the Committee, I assume that that meant that that particular service was either going to be discontinued or another agency was going to be substituted to perform that service, and in thinking the thing over very seriously, I came to the conclusion that it appeared to me that the railroads, by virtue of the fact that they enter into a contract with the terminal vehicle operators, were taking the position that they

384 were going to dictate to the City of Chicago who was to operate the terminal vehicles in the City of Chicago, and I didn't think that that was the right thing to do. I think that the City has the obligation to see that we have proper facilities for that operation, and the history of the Parmelee Company in the past has been very good as far as the transportation committee is concerned, and also the service to the people of the City of Chicago.

Not knowing what type of service was to be substituted or whether it was to be eliminated, I proposed an ordinance with the assistance of Ralph Gross and our Staff and presented it to the City Council, and had it sent to this Committee. I discussed the proposed ordinance which we are to consider here today with Mr. Grossman, and it appears—and I am perfectly willing to admit it—that probably my intentions were of the very best and that I was on the right track, at least, but probably my method of approach was not right, because the ordinance we are considering Mr. Grossman objects to in some certain provisions.

However, I do think that whether this is the avenue we should use to accomplish our purpose or not, we should
385 still find some way to accomplish the purpose by an amendment to the existing ordinance or a repeal of the existing ordinance, or some such way, and I am asking Mr. Grossman if he will comment on this after the discussion that I have had with him.

Alderman Burke: Would you read the ordinance.

Chairman Sheridan: Well, it's rather a lengthy document, Joe.

Mr. Grossman: The ordinance that was presented to me for consideration yesterday, or the day before yesterday, I examined very carefully, and I don't think that it is within the corporate power of the City of Chicago, but the objective can be obtained in some other way, I think, without conflicting with our charter powers, and I had a conference with some of the members this afternoon, and proposed an approach which I think we can work out between now and the next meeting of the City Council.

Chairman Sheridan: Well, the next meeting of the City Council, of course, is next Tuesday, and we are going to adjourn from next Tuesday until after Labor Day. I would certainly very much appreciate and desire to have some
386 such ordinance or amendment to the existing ordinance prepared so we can consider a way to cover this particular proposition.

Mr. Grossman: I think that we will be able to do that between now and Tuesday.

Chairman Sheridan: Well, may I suggest to the members of the Committee then that we recess this meeting until, say, 9:00 o'clock Tuesday morning, and consider the ordinance—the suggestions that you will bring in.

Mr. Grossman: I will have an ordinance prepared.

Alderman Burke: I second the motion.

Chairman Sheridan: Is there anybody who wants to comment on this or add anything to the discussion?

Alderman Holman: One question. Do I understand that terminal vehicles embrace those vehicles that operate between railroad stations?

Chairman Sheridan: Yes.

Alderman Holman: Is it limited to that?

Mr. Grossman: No, it is not. The operation from the railroad stations to points within the central business district, which is defined as the area bounded on the North by Ohio Street and on the South by Roosevelt Road, and the Lake on the East and Canal Street on the West. It is in the railroad terminal area, but it isn't necessarily between railroad stations. It may go from railroad stations to hotels and from hotels to railroad stations. That is the operation.

Alderman Holman: Thank you.

Mr. Grossman: And that operation can be continued by amendments to the present ordinance without conflicting with any of the statutory provisions.

Chairman Sheridan: Will you be kind enough to get that prepared for us?

Mr. Grossman: Yes.

Alderman Johnson: May I ask a question.

Chairman Sheridan: Yes.

Alderman Johnson: These vehicles carry passengers or baggage?

Mr. Grossman: This is public passenger vehicles.

Alderman Johnson: The old system where you get off the train and go to the hotel?

Mr. Grossman: Yes.

Alderman Burke: Is this a service that has been available to the travellers for some 60, 70, or 80 years?

Chairman Sheridan: It is my understanding they have been in existence in the City of Chicago for 103 years.

The Committee will go into executive session, then, and resolve the other question.

388 Thank you all for your attention.

(Whereupon, the meeting was adjourned.)

389 State of Illinois, }
County of Cook. } ss.

James P. Dolan, being first duly sworn, on oath says that he is a court reporter doing business in the City of Chicago; that he reported in shorthand the testimony and colloquy given at the meeting of the Committee on Local Transportation, July 21, 1955, at the City Hall, Chicago, Illinois; that the foregoing is a true and correct transcript of his shorthand notes so taken as aforesaid, and contains an excerpt of the testimony and colloquy given at the said meeting.

James P. Dolan.

Subscribed and sworn to before me this 18th day of November, A. D. 1955.

Julian K. Hall,

Notary Public.

(Notary Seal)

390 And on the same day, to wit, the 21st day of November, 1955, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 5, in words and figures following, to wit:

391 PLAINTIFFS' EXHIBIT NO. 5.

Minutes of the Committee on Local Transportation.

Meeting held Thursday, July 21, 1955 at 2:30 p. m.

Quorum present.

The committee then took up for consideration item No. 2 on the agenda—a proposed ordinance granting authority for and licensing the operation of terminal vehicles within the City of Chicago.

Chairman Sheridan stated that recently he was advised by the Vehicle License Commissioner that he had received a communication from the Parmelee Transportation Company advising that its contract with the railroads was to be cancelled out in September of this year, which would make it appear that the railroads were taking the position of dictating who would or could operate terminal vehicles in Chicago; that he did not think that was right and had

prepared an ordinance with the assistance of Mr. Gross, and had it introduced in the City Council and referred to the committee; that subsequently, he had discussed said ordinance with Mr. Grossman of the Corporation Counsel's office and that as a result of his conference with Mr. Grossman, it would appear that while he—Chairman Sheridan—was on the right track in the matter, his method of approach was wrong.

Mr. Grossman, who was present at the request of the committee, stated that he had looked over the ordinance as introduced by Chairman Sheridan and is of the opinion that the ordinance is not in proper form; but that he believes the objective can be obtained in some other way. He said he would endeavor to prepare and submit an ordinance on this subject to the committee before the next meeting.

At the suggestion of Chairman Sheridan, the committee voted to hold a recessed session Tuesday morning, July 26, 1955, at 9:00 o'clock, for the purpose of considering such ordinance as Mr. Grossman may submit.

The meeting was then recessed until Tuesday morning, July 26, 1955 at 9:00 o'clock.

John C. Marcin,

City Clerk,

By William F. Harrah,

Committee Secretary.

392 State of Illinois, }
County of Cook. } ss.

I, John C. Marcin, City Clerk of the City of Chicago in the County of Cook and State of Illinois, Do Hereby Certify that the annexed and foregoing is a true and correct excerpt from the minutes of the proceedings of the Committee on Local Transportation of the City Council of the City of Chicago had at a meeting of said committee held on twenty-first (21st) day of July, A. D. 1955, at 2:30 P.M., now on file in my office.

I Do Further Certify that the original of said minutes, of which the foregoing is a true copy, is entrusted to my care for safe keeping and that I am the lawful custodian of the same.

395 State of Illinois, }
County of Cook. } ss.

I, John C. Marcin, City Clerk of the City of Chicago in the County of Cook and State of Illinois, Do Hereby Certify that the annexed and foregoing is a true and correct copy of the minutes of the proceedings of the Committee on Local Transportation of the City Council of the City of Chicago had at a recessed session of said committee held on the twenty-sixth (26th) day of July, ~~A. D. 1955~~, at 9:00 A.M., now on file in my office.

I Do Further Certify that the original of said minutes, of which the foregoing is a true copy, is entrusted to my care for safekeeping and that I am the lawful custodian of the same.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of the City of Chicago aforesaid, at the said City, in the County and State aforesaid, this fifteenth (15th) day of November, A. D. 1955.

/s/ John C. Marcin,

(Seal)

City Clerk.

396 And on the same day, to wit, the 21st day of November, 1955 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 7 (Affidavit of Edwin A. Wahlen) in words and figures following, to wit:

397 IN THE UNITED STATES DISTRICT COURT.

(Caption—55-C-1883)

PLAINTIFFS' EXHIBIT NO. 7.

Affidavit of Edwin A. Wahlen.

398 State of Illinois,)
County of Cook. } ss.

Edwin A. Wahlen, being first on oath duly sworn, states as follows:

1. I am a practicing lawyer in Chicago, Illinois, associated with the law firm of Haight, Goldstein & Haight, with offices at 209 South La Salle Street, Chicago, Illinois. I have been associated with Mr. Benjamin F. Goldstein of that law firm in matters involving Railroad Transfer Service, Inc., including the litigation now pending before the Honorable Walter J. LaBuy, District Judge, in the United States District Court in Chicago, Illinois, Case No. 55 C 1883.

2. On September 9, 1955, I went in person to the office of the Chairman of the Committee on Local Transportation of the City Council of the City of Chicago (hereinafter referred to as "Committee"). A Miss O'Connell was in charge of that office at that time, and I obtained from her a blue covered typewritten transcript of the proceedings of a meeting of the Committee held on July 21, 1955 (hereinafter referred to as "Transcript"), which showed on its cover that it had been prepared by Sullivan Reporting Company (hereinafter referred to as "Sullivan"). I copied in my own handwriting portions of the Transcript and then returned the Transcript to Miss O'Connell.

I then went in person to the office of the City Clerk of the City of Chicago and obtained from a clerk in that office the original of the proposed Ordinance covering Terminal

Vehicles which was presented to the City Council on June 16, 1955, by Alderman Paul Sheridan, and on that date referred by the City Council to the Committee (hereinafter referred to as "Abandoned Ordinance"). I copied in my own handwriting portions of the Abandoned Ordinance and then returned it to the clerk from whom I had received it.

I then returned to my office and had a secretary make typewritten copies of my transcriptions of the Transcript and of the Abandoned Ordinance. Mr. Albert J. Meserow, one of the Counsel for Railroad Transfer Service, Inc., at the oral argument in support of the temporary injunction read into the record on November 10, 1955, at pages 25 to 30, inclusive, of the transcript for that date, a portion of my typewritten copy of the Abandoned Ordinance and my typewritten copy of a portion of the Transcript.

3. On November 14, 1955, I went in person to the office of the City Clerk of the City of Chicago and ordered 400 from Miss Cooper of that office certified copies of the Abandoned Ordinance and of the portion of the Transcript, which had been made available to me on September 9, 1955, and which I had copies in my own handwriting. I handed her a typewritten copy of my transcriptions of the Transcript and of the Abandoned Ordinance.

4. On November 15, 1955, Miss Cooper notified me by telephone that the typewritten copy of the portion of the Transcript which I had left with her was not the Official Minutes of the Committee meeting of July 21, 1955; that under the direction of the Secretary of the Committee a summary of the Transcript was prepared which became the Official Minutes of the meeting; and that only the Official Minutes could be certified by the City Clerk. I instructed her to prepare certified copies of the Official Minutes of the portion of the Committee meeting of July 21, 1955, covering public passenger vehicles.

5. On November 16, 1955, I was notified by Miss Cooper on the telephone that the certified copies were ready.

6. On November 17, 1955, I went to her desk in the City Clerk's office and she handed me three certified copies of:
(a) an extract of the Official Minutes of the Committee meeting of July 21, 1955;

401 (b) the Official Minutes of the Committee meeting of July 26, 1955; and

(c) the Abandoned Ordinance, one copy of each of which

documents is attached hereto as Exhibits 1, 2 and 3, respectively.

I asked Miss Cooper the reason for the discrepancy between the Transcript of the Committee meeting of July 21, 1955, and the Official Minutes. She called Mr. William F. Harrah, whom she said was the Committee Secretary, on the telephone to explain the reason to me. He told me that the Official Minutes are a summary of the Transcript and that Sullivan was the only person from whom I could obtain a certified copy of the Transcript.

7. On November 18, 1955, I went in person to Sullivan's Office, Room 1405, One North La Salle Street, Chicago, Illinois, and obtained from Mr. James Dolan, the reporter who acted as the reporter at the Committee's meeting on July 21, 1955, six certified copies of an extract of the Transcript of that meeting, one copy of which is attached hereto as Exhibit 4.

Edwin A. Wahlen.

Subscribed and sworn to before me this 21st day of November, 1955.

(Notary Seal)

A. F. Hucksold.

419 And afterwards on, to wit, the 12th day of December, 1955 there was filed in the Clerk's office of said Court a certain Memorandum in words and figures following, to wit:

420 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

MEMORANDUM.

The above cause is before the court on two motions: (1) a motion for summary judgment filed on behalf of the City of Chicago, and (2) a motion for temporary injunction filed by the plaintiffs.

These motions are based on the plaintiffs' complaint for declaratory judgment, together with the documents and exhibits attached thereto; on affidavits and exhibits submitted by the plaintiffs and the defendant-intervenor; and hearings had before the court. No answers have been filed

to the complaint by either the City of Chicago or Parmalee, although Parmalee's petition for intervention prays that it be considered as an "answer and claim".

In the present state of the record, therefore, the court must refer to the complaint and the petition with respect to the issues which are here presented.

Jurisdiction is premised on § 1331 of the Judicial Code, 28 U.S.C.A., granting to district courts original jurisdiction of civil actions which arise under the Constitution, laws and treaties of the United States and where the matter in controversy exceeds the sum of \$3,000 exclusive of interest and costs, and also on § 1337 of the Judicial Code, 28 U.S.C.A., granting to district courts original jurisdiction of civil actions arising under any act of Congress regulating commerce.

The complaint alleges that plaintiff railroads have filed tariffs with the Interstate Commerce Commission and the Illinois Commerce Commission for through passenger service from points outside of Chicago to points beyond Chicago; that there is a contract between the plaintiff railroads and the plaintiff, Transfer, whereby Transfer carries railroad passengers and their baggage from one Chicago terminal station to another; that before commencing his rail journey the passenger has purchased a through ticket to and beyond Chicago in which is included a coupon good for transportation between the Chicago terminal stations in Transfer's vehicles; that the coupon is surrendered by the passenger when he uses Transfer's vehicles; that the railroad pays Transfer the coupon rate fixed in the contract and the entire expense of the transfer operation is absorbed by the railroads; that more than 99% of all such through passenger service is in interstate commerce; that the power to regulate the manner in which the railroads shall carry out their responsibilities under § 1(3)(a), § 4, and § 3(4) of the Interstate Commerce Act, 49 U. S. C. A., is exclusively vested in the Interstate Commerce Commission and the ordinance is invalid as encroaching upon powers vesting exclusive regulation of this activity in the Interstate Commerce Commission pursuant to "An act to Regulate Interstate Commerce", 49 U. S. C. A. §§ 1 et seq.; that in the alternative the ordinance is invalid as an undue burden on interstate commerce in violation of Article 1, § 8, Clause 3 of the Constitution of the United States for the reason that § 28-31 of the Municipal Ordinance premises the issuance of a license to terminal vehicles upon

public convenience and necessity as determined by the commissioner and upon report to the council which latter body may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner; that the proper exercise of this power by the Commissioner and the City Council requires, as a minimum, the knowledge of all factors which influence

the demand for and supply of suitable passenger 422. vehicles and all the pertinent facts and circumstances in the operation of the railroads which influence the volume of through passengers traveling through Chicago; that practically none of these pertinent facts and circumstances are available to the commissioner and/or city council and the criteria prescribed by § 28.31-1 of the ordinance do not and can not make such pertinent information available to them; that § 28-6 of the ordinance confers sole discretion upon the commissioner to select the class of persons and individuals "qualified" to have public passenger vehicle licenses thereby limiting the number and character of passenger motor vehicles and the number and qualifications of the operators available to the railroads to perform the interstate transfer service they are required by law to provide.

The complaint also alleges that plaintiffs have advised the defendant, City of Chicago, and its officials that the provisions of the ordinance do not apply to the operations covered by contract between the plaintiff railroads and the plaintiff, Transfer, for the reason, (1) the ordinance specifically excepts from its regulation public passenger vehicles which are used in the operation of a public utility under the laws of Illinois; that the railroads which are engaged in the transportation of persons are public utilities within Chapter 111½ §§ 1 et seq., Smith-Hurd Ann. Stats., and that the motor vehicles of Transfer are operated as exclusive agents for said railroads providing the service covered by the public utility law of Illinois; that each of the motor vehicles of Transfer are therefore excepted; and (2) Transfer's passenger vehicle is not intended by the ordinance to be a "terminal vehicle" as defined thereunder in view of the various amendments incorporating changes in that definition and also in the application thereof under earlier ordinances.

The defendant, City of Chicago, has filed a motion for summary judgment requesting the court to determine as a

matter of law whether Chapter 28 of the Municipal Code applies to the operations of the plaintiff, Railroad Transfer Service, Inc. It is a cardinal rule that such motions are granted only in cases where there is no genuine issue of fact involved and where the moving party is entitled to judgment as a matter of law. . .

The petition for intervention, considered as an answer, does not dispute any of the factual allegations of the 423 complaint. In addition, Parmalee in oral argument has admitted that the transportation here involved is in interstate commerce. Parmalee does, however, contend that a dispute exists as to a material fact in that plaintiff railroads state they are required to provide through passenger transportation under the tariffs filed and the applicable statute, whereas Parmalee disagrees. While a dispute does, therefore, exist as to the effect of these tariffs and as to the requirements of the statute regarding through transportation, the court is of the opinion it is not a dispute as to a material fact but a disagreement as to the effect of these tariffs and the interpretation of the statute. This presents only a question of law.

Defendant, City of Chicago, not having filed an answer and having instead filed a motion for summary judgment solely on the basis of the complaint, must be considered to have admitted the truth of the facts alleged therein.

The court is of the opinion that a study of the pleadings, documents and exhibits does not reveal the existence of a dispute as to any of the material facts presented in the complaint. Also, it is not disputed that the transfer operation between railroad terminals is railroad transportation not subject to Part II of the Interstate Commerce Act except for its provisions for Commission regulation "relative to qualifications and maximum hours of service of employees and safety of operations and equipment"; and that Transfer is not a carrier or railroad under Part I of the Interstate Commerce Act.

A federal court has jurisdiction to enjoin the enforcement of statutes which are not authorized as an exercise of police power and which constitute an unlawful burden on interstate commerce. But the power to declare legislative enactments void is one that is exercised cautiously and with reluctance. The presumption is always in favor of the validity of such acts, and the burden of overcoming this strong presumption rests upon the one who challenges it.

The area within which Congress has exercised the power granted to it by the Constitution and the province within which the states have been permitted to encroach thereon by virtue of their police powers has been the subject of controversy in many cases for many years. The guides in judging the validity of state legislation with regard to the exercise of its police powers are discussed in *First Iowa Hydro-Elec. Coop. v. Federal Power Comm.*, (C. A. D. C., 1945) 151 F. (2d) 20, 26, and *First Nat. Bank Ben. Soc. v. Garrison*, (D. C. 1945) 58 F. Supp. 972, 983-985. They are (1) when state and local laws are in conflict with an act of Congress, the law of Congress prevails; (2) when an act of Congress does not clearly prohibit state action but such prohibition is inferable from the scope and purpose of federal legislation, it must be clear that the state legislation is inconsistent with that of Congress in order to render it invalid; (3) when Congress has circumscribed its regulation of interstate commerce to a limited field the intent to supersede the exercise of police power by the state is not implied as to matters not covered by federal legislation; (4) when a state has enacted laws under its police power although they affect interstate commerce, such laws may stand until Congress takes possession of the field under its superior authority to regulate such commerce, but such federal action must be specific in order to be paramount; and (5) Congressional supersedure of local laws is not to be inferred unless clearly indicated by considerations which are persuasive of its intent to do so.

The police power of a state may be delegated to the various municipalities throughout the state, and where such delegation has been made, a municipality, acting as an arm of the state, has power and discretion in passing laws in the public interest. Under Chapter 24, § 23-51, Cities & Villages Act, Smith-Hurd Ann. Stats., the State of Illinois has delegated to the City of Chicago and other municipalities, the power

“to license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations, and to prescribe their compensation.”

The right and power of the city to regulate the use of its streets by motor vehicles includes the right to impose reasonable conditions and restrictions to promote the general

welfare. And, in accord with the general propositions stated above, such regulation where obviously intended as a police regulation, and not operating unreasonably beyond the occasions of its enactment, is not invalid simply because it may incidentally affect the exercise of some right granted by Congress.

In connection with the application of federal legislation and supervision over the particular activity involved here, it is to be kept in mind that Congress will not be deemed to have superseded or excluded state action under the commerce clause until its intention to do so has been made definite and clear, and where Congress while regulating related matters has not acted on a subject which is peculiarly adapted to local regulation, the state may exert authority concerning such local matters although they indirectly burden interstate commerce. The Interstate Commerce Commission under the authority granted by Congress has not undertaken to exercise any supervision over the specific services performed by Transfer and neither has Congress indicated a clear intention to do so. The Interstate Commerce Commission has not considered this limited and incidental operation as one which it would regulate. *Commercial Zones and Terminal Areas*, (1949) 48 M. C. C. 418; *Status of Parmalee*, (1953) 288 I. C. C. 95; *Exchange of Free Transportation*, (1907) 12 I. C. C. 39; *Anacostia Citizens Assn. v. B. & O.*, (1912) 25 I. C. C. 411; *Michigan Cab Co.*, (1938) 7 M. C. C. 701; *New York Dry Dock Ry. Co. v. Pennsylvania R. Co.*, (C. A. 3, 1933) 63 F. (2d) 1010; Regulations 190.33 and 190.30 (49 C. F. R. §§ 190.33, 190.30).

Admitting this disclaimer of exercise of paramount authority by the Interstate Commerce Commission, the plaintiffs nevertheless insist that § 28-1 and § 28-31 of the Municipal Ordinance contains a potential exercise of discretion to prohibit the "stream of interstate commerce" represented by the transportation of through passengers between railroad terminals and thus invades the exclusive power granted to Congress to regulate interstate commerce.

The pertinent section of the ordinance is § 28-31.1 and provides:

"No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that

license unless, after a public hearing held in the same
426 manner as specified for hearings in Section 28-22.1, the Commissioner shall report to the Council that public convenience and necessity requires additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.

"In determining whether public convenience and necessity require additional terminal vehicle service, due consideration shall be given to the following:

- "1. The public demand for such service;
2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;
3. The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;
4. Any other facts which the Commissioner may deem relevant.

"If the Commissioner shall report that public convenience and necessity require additional terminal vehicle service, the Council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued, not to exceed the number recommended by the Commissioner."

The precise issue presented is therefore—does the *power to forbid* the operation of Transfer as an incident of railroad transportation on the grounds of public convenience and necessity violate the commerce clause of the Constitution; and, does the discretion contained in said section constitute a burden on interstate commerce so as to render the ordinance invalid. It is apparent that the lan-
427 guage of the above section does not prevent Transfer from performing its interstate commerce operation. Transfer has not applied for a permit or license as a terminal vehicle operator under the City's ordinance.

The powers of municipalities to control the use of their streets is stated in 64 C. J. S., Municipal Corporations, § 1760, page 199, as follows:

"As a mere privilege, the use of streets by common

carriers is subject to reasonable control and regulation, and since such a right and privilege is special, unusual, and extraordinary, the power to regulate and restrict such use of the streets is broader than in respect of their use by the general public. The state or municipality, within the limits of its delegated powers, may determine to what extent or on what streets such an extraordinary use as encroaches on the paramount rights of the public at large will be permitted, and it may discriminate against those making such use of the streets, and may either grant or withhold the right or privilege of operating vehicles for such a purpose, and may grant it to some and refuse it to others without violating the constitution, except that a license or permission cannot be granted to some and refused to others who are willing to comply with the terms and conditions of the regulation providing for such license or permission."

In *Railway Express Agency v. New York*, (1948) 336 U. S. 106, 111, the Supreme Court stated:

"Where traffic control and use of highways are involved and where there is no conflicting federal regulation, great leeway is allowed local authorities, even though the local regulation materially interferes with interstate commerce."

The legal philosophy expounded in *Bush v. Maloy*, (1924) 267 U. S. 317 and *Buck v. Kuykendall*, (1924) 267 U. S. 307, does not reject the principle that a provision for exercise of discretion is valid when properly authorized under the police power delegated. These cases support the proposition that the granting or refusing of a permit for interstate transportation over state highways is a proper exercise of state authority provided that it is not used to control or burden interstate commerce. This distinction was observed in *Bradley v. Pub. Utility Comm.*, (1932) 289 U. S. 92, 95:

"It is contended that an order denying to a common carrier by motor a certificate to engage in interstate transportation necessarily violates the Commerce Clause. The argument is that under the rule declared in *Buck v. Kuykendall*, 267 U. S. 307 and *Bush & Sons Co. v. Maloy*, 267 U. S. 137, an interstate carrier is entitled to a certificate as of right; and that hence the

reason for the commissioner's refusal and its purpose are immaterial. In those cases, safety was doubtless promoted when the certificate was denied, because intensification of traffic was thereby prevented. See *Stephenson v. Binford*, 287 U. S. 251, 269-272. But there, promotion of safety was merely an incident of the denial. Its purpose was to prevent competition deemed undesirable. The test employed was the adequacy of existing transportation facilities; and since the transportation in question was interstate, denial of the certificate invaded the province of Congress. In the case at bar, the purpose of the denial was to promote safety; and the test employed was congestion of the highway. The effect of the denial upon interstate commerce was merely an incident."

It is contended that the purpose of the ordinance was to favor Parmalee, to assure the continuance of Parmalee's operations, and thus to prevent the operation of Transfer in competition with Parmalee. If the legislation is within the power properly granted to municipal authorities, the courts of Illinois have held that in determining its validity, the motive which prompted its enactment is not a matter of concern and an ordinance will not be declared invalid because of motives which induced its passage. *Murphy v. Chicago, R. I. & P. Ry. Co.*, (1910) 247 Ill. 614; *Keig Stevens Baking Co. v. City of Savanna*, (1942) 380 Ill. 303; *Stearns v. City of Chicago*, (1938) 368 Ill. 112; *City of Chicago v. Walters*, (1936) 363 Ill. 125 aff'd *Hauge v. City of Chicago*, 299 U. S. 387; *Tribune Co. v. Thompson*, (1930) 342 Ill. 503; *Moskal v. Catholic Bishop of Chicago*, (1942) 315 Ill. App. 461.

The above section of the ordinance does not grant the Commissioner and City Council an arbitrary right to refuse a terminal vehicle license. It is true it confers a discretionary power, but this condition is valid where the public health and safety are involved. In such instances courts are loath to interfere with legislative discretion and reluctant to declare such ordinances invalid. *Tower Realty v. City of East Detroit* (C. A. 6, 1952), 196 F. (2d) 710. The fact that discretion is lodged in an official or group of officials to grant or withhold a license does not entitle plaintiffs to complain until the license is arbitrarily or unlawfully withheld because

"* * * one who is within the terms of the statute

but has failed to make the required application, is not at liberty to complain because of his anticipation of improper or invalid action in administration." *Smith v. Cahoon* (1931), 283 U. S. 553.

In *Lehon v. City of Atlanta* (1916), 242 U. S. 53, the Supreme Court stated:

"To complain of a ruling, one must be made the victim of it. One cannot invoke to defeat a law, an apprehension of what might be done under it, and which, if done, might not receive judicial approval."

Plaintiffs have offered no evidence in support of the motion to enjoin the enforcement of the ordinance and the allegations of the verified complaint in connection therewith are the basis for its application for injunctive relief. Fines, and even imprisonment, which might result from continued violations of the ordinance do not constitute irreparable injury. Such results could be avoided by obeying the ordinance. Even if there was doubt as to the constitutionality of a statute, a fear of multiplicity of suits, fines and impairment of business are not of themselves sufficient ground for equitable relief against the enforcement of such a statute. *Dalton Adding Machine Co. v. Comm. of Va.* (1915), 236 U. S. 699; *Starnes v. City of Milledgeville* (D. C. Ga., 1944), 56 F. Supp. 956; *S. Buchsbaum & Co. v. Beman* (D. C. Ill., 1936), 14 F. Supp. 445, 447.

The court concludes that the ordinance under consideration is not invalid as an attempt to regulate and control interstate commerce, but is the legitimate exercise of police power by the City of Chicago in the interest of the safety and convenience of the public. *Bradley v. Pub. Utilities Comm.* (1933), 289 U. S. 92; *Continental Baking Co. v. Woodring* (1932), 286 U. S. 325; *Stephenson v. Binford* (1934), 287 U. S. 251; *Texport Carrier Corp. v. Smith* (D. C. Tex., 1933), 8 F. Supp. 28; *Wald Storage & Transfer v. Smith* (D. C. Tex., 1933), 4 F. Supp. 61 aff'd 290 U. S. 596.

Plaintiffs contend that the ordinance does not apply to them because (1) as public utilities they are excepted from its provisions, and (2) it was not the intention of the City Council in passing the amendment to include the service by Transfer as a "terminal vehicle" service.

Conceding that the plaintiff railroads are public utili-

ties and as such beyond the control of the City of Chicago, is the operation of Transfer within the exemption?

The railroads assert that under §3(4) and §302(c)(2) of the Interstate Commerce Act, 49 U. S. C. A., Transfer's service is an integral part of their railroad operation which they are obliged to provide. Section 3(4) of the Act provides for the interchange of traffic as follows:

"All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. * * *"

431 In *Kentucky & L. Bridge Co. v. Louisville & N. R. Co.*, (C. C. D. Ry., 1889) 37 Fed. 628, the court referred to *Railroad Co. v. Railroad Co.*, 1 I. C. C. Rep. 94, in connection with a discussion on through tickets and quoted as follows:

"* * * such tickets very evidently are a great convenience to travelers, and perhaps to connecting roads; but they are part of the voluntary arrangements for business purposes, like joint tariffs, interchange of cars, and common use of depots. It being, the refore, under our statute, matter of mutual agreement, whether coupon or through tickets shall be sold by a railroad company over roads of other companies, it follows that the form of such tickets, and the manner of their sale, are also matters of agreement by the companies the form of their tickets and how they shall be sold, they have the right to do so, and by such agreement become interstate carriers; but if they cannot agree, the act does not undertake to coerce them to do business together upon terms that may be justly objectionable or injurious. * * * No authority is conferred upon common carriers of interstate commerce to issue through tickets to passengers, or through bills of lading for property, at through rates, over connecting lines, in the absence of such arrangements between the companies. * * *"

Arrangements for through tickets and other incidences to their function as common carriers are left to the discretion of the railroads. In these facets of their operations, it was stated in *I. C. C. v. Baltimore & O. R. Co.*, (C. C. D. Ohio, 1890) 43 Fed. Rep. 37, 51 that

“ * * * the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and practices.”

432 This interchange of traffic between carriers is left to the voluntary action of the railroads involved and a railroad is not under a compulsion or duty to provide such facilities in the absence of Commission action requiring it in the public interest. *Southern Pac. v. I. C. C.*, (1905) 200 U. S. 536, 553; and other cases cited under §3 (4). The character of the service provided for by Transfer is incidental to railroad operation and is analogous to contracts by railroads for heat, light and power for their terminal stations. The service of Transfer does not constitute an operation as a public utility and its motor vehicles are not, therefore, excluded from the operation of the ordinance.

Plaintiffs contend that the particular service provided by Transfer was not intended to be included within the scope of the Public Passenger Vehicle ordinance and particularly §29-1 thereof. The reasons urged in support of this argument are: (1) that if it is applicable, then the City Council deliberately disregarded the relation of such service to through railroad transportation of which it is an integral part; and (2) that the amendments to the ordinance after June 16, 1945 to the present and changes in the qualifications and definitions of “public passenger vehicle” and “terminal vehicle” show an intention to exclude Transfer’s service.

If the conclusion that the City Council deliberately disregarded the relationship of Transfer’s service to the railroads is sound, it emphasizes the Council’s intent to include its operation.

With respect to plaintiffs conclusion that prior to 1950 this type of service was expected as being a public utility operation, references to earlier definitions of "public passenger vehicle" are of no assistance because of the difference in language contained in the present ordinance. The court has determined that Transfer's service is not excepted as a public utility operation.

The last point urged by plaintiffs is that the ordinance did not intend to include Transfer's operation in the definition of a "terminal vehicle" as a public passenger vehicle because Transfer's services are exclusively devoted to interstation transportation. Regardless of whether this exclusive service was covered by previous ordinances, the language of the present ordinance is clear and unambiguous. It provides in §28-1 that

" 'Terminal vehicle' means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in Section 28-31."

Section 28-1 contains no qualifying or limiting language from which the court can conclude that the service by Transfer's vehicles was not encompassed within its scope. All the railroad terminals which Transfer serves are within the geographical area defined. The legislative history and background surrounding the passage of amended §28-1 has been considered. The exhibits show discussion as to whether only interstation transportation was intended to be covered or whether all transportation from railroad stations within the designated area was to be included. These exhibits fail to indicate an intention to except interstation transportation of coupon holders by Transfer's vehicles.

In summary, the court holds the Public Passenger Vehicle ordinance, as amended July 26, 1955, to be a proper exercise of the City's police power and that the services of Transfer are within the ambit of its application.

The plaintiffs' motion for temporary injunction is denied, and the motion of the City of Chicago for summary judgment is sustained. Counsel are requested to present ap-

appropriate Findings of Fact, Conclusions of Law and Judgment Order within three (3) days from date hereof.

Walter J. LaBuy,

Judge, United States District Court.

December 12, 1955.

434 Messrs. Benjamin F. Goldstein and

Albert J. Meserow; 209 S. La Salle (4)

Amos M. Mathew, Esquire

280 Union Station (6)

Lee A. Freeman, Esquire

208 South La Salle

John C. Meianiphy,

Acting Corporation Council

City Hall

435 And afterwards on, to wit, the 15th day of December, 1955 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Notice and Proposed Judgment Order in words and figures following, to wit:

436 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—55-C-1883)

NOTICE.

To: Benjamin F. Goldstein,

Attorney for Plaintiff

209 S. LaSalle St.,

Chicago, Illinois:

Lee A. Freeman,

Attorney for Intervenor,

Parmalee Transportation Co.,

208 S. LaSalle St.,

Chicago, Illinois.

Amos M. Mathew, Esquire

280 Union Station,

Chicago 6, Illinois.

Please take notice that on Thursday, December 15, 1955, at 2 P. M., or as soon thereafter as counsel can be heard, we shall appear before the Honorable Walter J. LaBuy

in the courtroom usually occupied by him in the United States District Courthouse, Chicago, Illinois, and shall then and there present a judgment order pursuant to the memorandum opinion of the court, a copy of which judgment order is herewith served upon you.

John C. Melaniphy,

Acting Corporation Counsel.

Joseph F. Grossman,

Special Assistant Corporation Counsel.

Attorneys for Defendants.

Received a copy of the above and foregoing notice this 15th day of December, 1955.

Haight, Goldstein & Haight,

By E. A. Wahlen,

Amos M. Mathews,

By Evelyn Macabico,

Lee A. Freeman

437 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—55-C-1883)

JUDGMENT ORDER.

This cause coming on to be heard upon the verified complaint, motion for preliminary injunction and affidavits of the plaintiffs, the verified petition to intervene and affidavits of intervenor, Parmalee Transportation Company, the motion for summary judgment of the city of Chicago, the briefs and arguments of counsel, and the court being fully advised in the premises, finds:

1. Federal jurisdiction is premised upon Sections 1331 and 1337 of the Judicial Code, 28 U. S. C. A. Questions arising under the Constitution and laws of the United States are in controversy involving a sum in excess of requisite jurisdictional amount.

438 2. Railroad Transfer Service, Inc., (hereinafter "Transfer") one of the plaintiffs herein, has entered into a five year contract with the railroad companies, plaintiffs herein, under which Transfer, as an independent contractor, has undertaken to transfer passengers traveling through Chicago, between terminal railroad stations in

the City of Chicago, by means of motor vehicles and to provide for the pick-up and delivery of baggage within the Chicago metropolitan area.

Under said contract, upon the rendition of its interstation passenger service, Transfer collects transfer coupons previously issued or sold to the passengers by the railroads as a part of their established joint rates and through routes. The transfer coupons are redeemed by the outbound railroad at fixed rates of compensation. The pick-up and delivery of baggage service is separately contracted for by the individuals desiring the service.

The railroads have provided interstation transfer services in Chicago as a means of meeting the competition of other railroad routings through Chicago involving only a single terminal station and, therefore, not requiring 439 interstation transfers. Similar provisions for transfer of passengers between stations have been provided by the railroads in other terminal areas, although in many instances and terminal areas passengers are required to make their own transfer arrangements even though through tickets are sold.

3. The City Council of the city of Chicago has duly enacted Chapter 28 of the Municipal Code of Chicago, a copy of which, as amended, is attached to the complaint as Exhibit B.

4. Chapter 28 of the Municipal Code of Chicago, as amended, declares it unlawful to operate a public passenger vehicle on the public ways of the city without a public passenger vehicle license. Such licenses are issued upon application and determination by the City Public Vehicle License Commissioner, among other factors, that the applicant is of proper character and reputation; that he has the requisite financial ability to render safe service, maintain equipment and pay all judgments resulting from the operations; that the vehicles proposed to be used are in safe operating condition with adequate body and seating facilities in part as specified in the ordinance; and that adequate public liability and property damage insurance is provided. The ordinance further provides that be-

440 fore additional terminal vehicle licenses may be issued the Commissioner shall conduct public hearings and give due consideration to the public demand for additional service, the effect upon the safety of pedestrian and vehicular traffic, the effect upon existing licensees and such other factors which shall enable the Commissioner to de-

determine and report that the public convenience and necessity requires the additional terminal vehicle licenses.

These provisions and requirements of the city ordinance are appropriately related to the public safety, health and welfare and are proper and reasonable exercises of the police power functions of the city, in the regulation of the commercial use of its streets.

5. (a) Transfer is not a public utility under the laws of Illinois.

(b) By virtue of its contract with plaintiff railroad companies, Transfer does not operate its vehicles within the city of Chicago exclusively as agent for and in behalf of plaintiff railroads as a public utility under the laws of Illinois, as defined in Section 28-1 of the Municipal Code of Chicago.

(c) Transfer's operations are confined to the transportation of passengers within the city on through route railroad tickets covering trips between points outside of the corporate limits of the city in intrastate and interstate commerce.

441 (d) Said operations are for hire from place to place within the corporate limits of the city as provided in Section 28-2 of the Municipal Code of Chicago.

(e) Transfer's vehicles are "terminal vehicles" as defined in Section 28-1 and are subject to all the provisions and regulations of Chapter 28 of the Municipal Code of Chicago, as amended applicable thereto.

6. Transfer has not applied for nor sought licenses from the city of Chicago to operate its vehicles as public passenger vehicles.

7. The Interstate Commerce Commission has not undertaken to exercise any supervision of the services performed by Transfer (except maximum hours of employee work).

8. Chapter 28 of the Municipal Code of Chicago contains reasonable police power controls and requirements in furtherance of the public safety. As such, those controls and requirements may be validly imposed upon motor vehicle operations over city streets, even though such motor vehicle operations are in, or a part of, interstate commerce without constituting an unlawful or unconstitutional burden upon interstate commerce in violation of the Constitution of the United States.

442 9. Under Chapter 28 of the Municipal Code of Chicago, the city may refuse to license vehicles to be

used in interstate commerce, if the applicant is not of proper character and reputation as a law abiding citizen; or the applicant fails to demonstrate financial ability to render safe and comfortable service, maintain his equipment and pay all judgments arising out of the operations; or the vehicles sought to be licensed are not in safe or proper condition, do not have adequate body and seating facilities or do not comply with the specific requirements of the ordinance; or the requisite public liability, property damage and workmen's compensation insurance is not maintained; or if the issuance of additional licenses would adversely affect the safety of pedestrians and vehicular traffic in the area.

10. The operation of terminal vehicles over the streets and public places of the City of Chicago, by Transfer without public passenger terminal vehicle licenses as required by Chapter 28 of the Municipal Code of Chicago is unauthorized and unlawful.

443 It Is Therefore Hereby Ordered, Adjudged and Decreed that the motion of the plaintiffs herein for a preliminary injunction restraining the defendant City of Chicago and its named officers from enforcing or attempting to enforce the ordinances of the city of Chicago contained in Chapter 28 of the Municipal Code of Chicago as against plaintiff, Railroad Transfer Service, Inc., be and it is hereby denied.

It Is Further Ordered, Adjudged and Decreed that the temporary restraining order heretofore entered by this court on October 24, 1955, successively extended, be and it is hereby vacated.

It Is Further Ordered, Adjudged and Decreed that the motion of the City of Chicago for a summary judgment be and it is hereby granted.

Enter:

Judge.

Dated December, 1955.

444 And on the same day, to wit, on the 15th day of December, 1955, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy, District Judge, appears the following entry, to wit:

445. IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

It Is Ordered that leave be and hereby is granted to file objections to proposed findings of fact, conclusions of law and judgment on or before January 2, 1956 and that hearing thereon be and it hereby is continued to January 16, 1956.

446 And afterwards on, to wit, the 20th day of December, 1955 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Notice and Proposed Draft Order in words and figures following, to wit?

447 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—55-C-1883) * *

NOTICE:

To: Benjamin F. Goldstein,
Attorney for Plaintiff,
209 S. LaSalle St.,
Chicago, Illinois.

Amos M. Mathews, Esquire,
200 Union Station,
Chicago 6, Illinois.

Lee A. Freeman,
Attorney for Intervenor,
Parmelee Transportation Co.,
208 S. LaSalle St.,
Chicago, Illinois.

Please take notice that on Monday, January 16, 1956, at 10 A. M., or as soon thereafter as counsel can be heard, we shall appear before the Honorable Walter J. LaBuy in the courtroom usually occupied by him in the United

States District Courthouse, Chicago, Illinois, and shall then and there withdraw the draft order presented on December 15, 1955 and substitute the judgment order, a copy of which is herewith served upon you, and that objections or exceptions to the substitute order be then and there considered by the court.

John C. Melaniphy,

Acting Corporation Counsel,

Joseph F. Grossman,

Special Assistant Corporation Counsel,

Attorneys for Defendants.

Received a copy of the above and foregoing notice with judgment order attached this 20th day of December A. D. 1955.

Haight, Goldstein & Haight,

By E. A. Wahlen,

Amos Mathews,

By R. F. Munsell,

Lee H. Freeman.

ORDER OF SUMMARY DECLARATORY JUDGMENT.

This cause coming on to be heard upon the verified complaint, plaintiffs' motion for preliminary injunction and affidavits in support of said motion, the verified petition of Parmelee Transportation Company to intervene as a defendant and affidavits in behalf of defendant intervenor, the motion for summary judgment of defendants City of Chicago and its officers and the briefs and arguments of counsel, and the court being fully advised in the premises, finds:

(a) That the federal jurisdiction is premised upon Sections 1331 and 1337 of the Judicial Code, 28 U. S. C. A. granting to district courts original jurisdiction of civil actions arising under the constitution and laws of the United States involving a sum in excess of the requisite jurisdictional amount;

(b) That there is no genuine issue of fact involved in this controversy and the motion of defendants City of Chicago and its officers for summary declaratory judgment to determine the controversies in this action as a matter of law is sustained.

449

Material Facts.

1. Railroad Transfer Service, Inc. (hereinafter "Transfer"), one of the plaintiffs herein, has entered into a five year contract with plaintiffs railway and railroad companies (hereinafter "Terminal Lines") under which Transfer as an independent contractor has undertaken to transport, by motor vehicles, passengers traveling through Chicago between railroad stations within the Chicago terminal area.

2. Terminal Lines have provided interstation transfer services in Chicago as a means of meeting the competition of other railroad routings through Chicago involving only a single terminal station which do not require interstation transfers. Similar provisions for transfer of passengers between stations have been provided by railroads in other terminal areas, although in many such terminal areas passengers are required to make their own transfer arrangements between terminal stations on through railroad tickets.

3. Transfer collects transfer coupons previously issued to passengers pursuant to tariffs applicable to through fares published by Terminal Lines and filed with the Interstate Commerce Commission and the Illinois Commerce Commission. The transfer coupons are redeemed by the outgoing Terminal Lines at rates of compensation fixed by said contract.

4. Transfer's operations began on October 1, 1955, and are confined to the transportation of passengers within the city on through route railroad tickets covering trips between points outside and beyond the corporate limits of the city in intrastate and interstate commerce. More than 99% of all such through passenger service is interstate commerce.

450 5. Chapter 28 of the Municipal Code of Chicago, as amended (hereafter "Ordinance"), a copy of which is attached to the complaint as Exhibit B, was passed by the City Council of the city of Chicago and became effective prior to October 1, 1955.

The Ordinance provides for the licensing of four classes of public passenger vehicles, one of which is designated as a terminal vehicle. Such licenses are issued, upon application, by the city Public Vehicle License Commissioner. If, upon investigation, he finds that the applicant is qualified as a law abiding citizen; that he has the financial ability to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period; that the vehicles proposed to be used are in safe operating condition with adequate body and seating facilities as specified in the Ordinance; and that adequate public liability and property damage insurance is provided.

6. Section 28-1 of the Ordinance defines "Public Passenger Vehicle" and "Terminal Vehicle" as follows:

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Terminal vehicle" means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in Section 28-31

451 7. Section 28-2 of the Ordinance is in part as follows:

"28-2. License required.) It is unlawful for any person other than a metropolitan transit authority or public utility to operate any vehicle, or for any such person who is the owner of any vehicle to permit it to be operated, on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle."

8. Section 28-31 of the Ordinance is as follows:

"28-31. Terminal Vehicles.) Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship dock to destinations in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaine Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan."

The area described in Section 28-31 is commonly known as the central business district of Chicago in which the principal commercial hotels and all of the terminal stations of Terminal Lines and steamship docks are located.

1. Sections 28-31.1 and 28-31.2 provide as follows:

"28-31.1. Public convenience and necessity.) No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in Section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued."

452 In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. The public demand for such service;
2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;
3. The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;
4. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner.

28-31.2. Local Fares.) The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided that children under 12 years of age, when accompanied by an adult, shall be carried at not more than half fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner."

10. Except as to maximum hours of service of em-

ployees, the Interstate Commerce Commission has not undertaken to exercise any supervision of the services performed by Transfer, and Transfer has not applied for nor sought licenses from the city to operate its vehicles as Public Passenger Vehicles.

453

Conclusions of Law.

1. Transfer is not a public utility under the laws of Illinois, and does not operate its vehicles within the city of Chicago exclusively as agent for and in behalf of Terminal Lines as public utilities under the laws of Illinois.

2. Transfer operates its motor vehicles on public ways for the transportation of passengers for hire from place to place within the corporate limits of the city as provided in Section 28-2 of the Ordinance.

3. Section 28-31.1 of the Ordinance does not prevent Transfer from performing its interstate commerce operation as an incident of railroad transportation. It does not grant the Public Vehicle License Commissioner and the City Council an arbitrary right to refuse a terminal vehicle license. It confers a discretionary power to grant or withhold such license under the police power delegated to the city to control traffic on the city streets in the interest of public safety and Transfer is not at liberty to complain of potential arbitrary and unlawful administration of the Ordinance until it has applied for and has been refused such license.

It Is Therefore Ordered, Adjudged and Decreed that the motion of plaintiffs for a preliminary injunction restraining the defendants City of Chicago and its officers from enforcing or attempting to enforce the provisions of the Ordinance, Chapter 28 of the Municipal Code of Chicago, against plaintiff Railroad Transfer Service, Inc. be and it is hereby denied.

454 It Is Further Ordered, Adjudged and Decreed that the temporary restraining order heretofore entered by this court on October 24, 1955, and successively extended, be and it is hereby vacated.

Enter:

Dated: January, 1956. /

Judge.

537 And afterwards on, to wit, the 6th day of January, 1956 there was received in the Clerk's office of said Court the certain Conclusions of Law to be Submitted in the "Order of Summary Declaratory Judgment" submitted by the City of Chicago in words and figures following, to wit:

538 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—55-C-1883) * *

CONCLUSIONS OF LAW TO BE SUBSTITUTED IN THE "ORDER OF SUMMARY DECLARATORY JUDGMENT" SUBMITTED BY THE CITY OF CHICAGO.

The city of Chicago on December 20, 1955, served notice of its intention to present to the court on January 16, 1956, an "Order of Summary Declaratory Judgment, a copy of which was served upon all parties. Included in the said "Order of Summary Declaratory Judgment were suggested Conclusions of Law.

Parmelee Transportation Company suggests to the court the substitution of the following Conclusions of Law, but in all other respects adopts the city's suggested order.

Conclusions of Law.

1. Transfer is not a public utility under the laws of Illinois and does not devote its vehicles exclusively to the operation of a public utility under the laws of Illinois.

539 2. Transfer operates its motor vehicles on public ways for the transportation of passengers for hire from place to place within the corporate limits of the city as provided in Section 28-2 of the ordinance. The operations of Transfer constitute terminal vehicle operations as defined in Section 28-1 of the ordinance.

3. Chapter 28 of the ordinance is a proper exercise of police power by the city in the interest of the safety, health and welfare of the public. The federal government has not undertaken to regulate the subjects over which the city has thus exercised its police power. The Congress of the United States has not indicated an intention to pre-

clude local controls in this field. The imposition by the city of regulations and controls upon Transfer is appropriate to the public safety, health and welfare and does not constitute an invalid or unconstitutional burden upon interstate commerce.

4. The ordinance does not grant the Public Vehicle License Commissioner and the City Council an arbitrary right to refuse a terminal vehicle license. It confers a discriminatory power to grant or withhold such license under the police power delegated by the city to control traffic on the city streets and for other purposes in the interest of public safety, health and welfare. Transfer is not at liberty to complain of potential arbitrary and unlawful administration of the ordinance until it has applied for and been improperly refused such license.

Respectfully submitted,

Lee A. Freeman,

*Attorney for Parmelee Transportation
Company; Intervenor.*

Lee A. Freeman,
195 South LaSalle Street,
Chicago 3, Illinois;
An. 3-5939.

541 And afterwards on, to wit, the 11th day of January, 1956 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exceptions to Intervenor's Suggested Proposed Order of Summary Declaratory Judgment in words and figures following, to wit:

542 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

PLAINTIFFS' EXCEPTIONS TO INTERVENOR'S SUGGESTED PROPOSED ORDER OF SUMMARY DECLARATORY JUDGMENT.

1. Plaintiffs Except to the Proposed Order of Summary Declaratory Judgment attached to the Notice by Parmelee, as Intervenor, served on Plaintiffs on January 5, 1956, to be presented to this Court on January 16,

1956, which Parmelee submits for substitution for the Proposed Order of Summary Declaratory Judgment attached to the Notice by the Defendants dated December 20, 1955, also to be presented to this Court on January 16, 1956.

2. Parmelee's Proposed Order of Summary Declaratory Judgment substitutes "Conclusions of Law" therein set forth for the Conclusions of Law set forth in the Defendants' Proposed Order of Summary Declaratory Judgment, "but in all other respects adopts the" Defendants' Proposed Order of Summary Declaratory Judgment.

3. Parmelee's proposed Conclusions of Law differ from the Defendants' proposed Conclusions of Law set forth in the Defendants' document under the numbered paragraph herein referred to in the heading in the following respects:

Parmelee No. 1 (Def. No. 1).

(a) Parmelee eliminates the following portion of this paragraph:

"Parmelee * * * does not operate its vehicles within the City of Chicago exclusively as agent for and in behalf of Terminal Lines as public utilities under the law of Illinois."

(b) Parmelee substitutes for that language the following language:

"Parmelee * * * does not devote its vehicles exclusively to the operation of a public utility under the laws of Illinois";

Parmelee No. 2 (Def. No. 2).

Parmelee adds the following sentence at the end of this paragraph:

"The operations of Transfer constitute terminal vehicle operations as defined in Section 28-1 of the Ordinance."

Parmelee No. 3.

Parmelee adds a new paragraph numbered 3 which reads:

"3. Chapter 28 of the ordinance is a proper exercise of police power by the city in the interest of the safety, health and welfare of the public. The federal government has not undertaken to regulate the subjects over which the city has thus exercised its police power. The Congress

of the United States has not indicated an intention to preclude local controls in this field. The imposition by the city of regulations and controls upon Transfer is appropriate to the public safety, health and welfare and does not constitute an invalid or unconstitutional burden upon interstate commerce."

Parmelee No. 4 (Def. No. 3).

(a) Parmelee omits the first sentence of this paragraph which reads:

544 "Section 28-31.1 of the Ordinance does not prevent Transfer from performing its interstate commerce operation as an incident of railroad operations."

(b) Parmelee divides the third sentence of this paragraph into two sentences, adds the words underscored herein, and omits the words placed in parenthesis herein:

"It confers a discretionary power to grant or withdraw such licenses under the police power delegated to the city to control traffic in the city streets and for other purposes in the interest of public, safety, health and welfare. (and) Transfer is not at liberty to complain of potential arbitrary and unlawful administration of the ordinance until it has applied and (has) been improperly refused such license."

(c) Parmelee rennumbers 3 to be "4".

**PLAINTIFFS' EXCEPTIONS TO PARMELEE'S
PROPOSED FINDINGS OF FACT.**

4. Plaintiffs Except to Parmelee's Proposed Findings of Fact which by reference adopt the Defendants' Proposed Findings contained therein under the heading therein "Material Facts" upon the grounds set forth in Plaintiffs' Exceptions to Defendants' Proposed Order of Summary Declaratory Judgment filed with this Court on January 3, 1956 under the appropriate headings appearing in Part One and Part Two thereof, which by specific reference are made a part hereof.

5. One of the principal grounds for the Plaintiffs' Exceptions was that the Findings in the Memorandum on which the Defendants' Proposed Findings of Fact purport to be responsive are fatally defective in that the Court erroneously omitted and failed to make any reference or to take into account and give effect to—

(a) The decisive provisions and actual operations of the Agency Contract between the Terminal Lines and Transfer pleaded in the Complaint and set forth in the Agency Contract attached to, and made a part of the Complaint; and

545 (b) The decisive Section 1(4) of the Interstate Commerce Act (hereinafter referred to as "Act"), which was quoted in full in the Complaint.

6. These omitted decisive provisions and actual operations of the Agency Contract embrace the following material and pertinent facts:

Required interstation interstate through passenger and accompanying hand baggage transportation services (hereinafter referred to as "Required Interstation Transfer Service") are supplied by Transfer's passenger vehicles under the irrevocable five-year Agency Contract as Agent for, on behalf of, and for the account of, the Terminal Lines to their intransit interstate through passengers requiring such transfer service on arrival in Chicago to complete their through interstate journey via Chicago as a junction point. Each of such interstate through passengers purchased an original through ticket including as a part thereof a transfer coupon for that purpose, which entitles the Coupon holder to such Required Interstation Transfer Service by Transfer's passenger vehicles without additional charge.

This Required Interstation Transfer Service is performed by Transfer for the Terminal Lines only, and only under the Agency Contract between Transfer and the Terminal Lines which is exclusive in nature. The Terminal Lines absorb all the expense of this Required Interstation Transfer Service, pay Transfer for its performance of that service, at the rate and upon the terms and conditions specified in the Agency Contract. Transfer's passenger vehicles used in the Required Interstation Transfer

Service are devoted exclusively for use in the operation of that service only, and only for the Terminal

546 Lines. Plaintiff's passenger vehicles used in the Required Interstation Transfer Service are devoted exclusively for operation in that service, and only by Coupon holders of the Terminal Lines, and only for use by such Coupon holders for such Required Interstation Transfer Service.

This Required Interstation Transfer Service so per-

formed by Transfer, the Terminal Lines are required to perform under Section 1(4) of the Act as part of the complete interstate through passenger transportation service which the Terminal Lines are required by Section 1(4) of the Act to establish over their connecting lines via Chicago as a junction point and to meet the competitive conditions of the connecting Terminal Lines using the same terminal station of the 8 terminal stations in that City which are used by one or more but not all of the twenty-one Terminal Lines.

The inclusion, or exclusion, of these omitted decisive facts and statutory requirements as part of the material and pertinent facts to form the factual basis for the Court's findings has a decisive significance on the determination of every issue arising on the Defendants' Motion for Summary Declaratory Judgment—i. e., whether the Ordinance as construed by the Court to be a grant of power to forbid, on grounds of public convenience and necessity, the use of the streets of Chicago to Transfer's passenger vehicles when related to the operations of Transfer, either as found by the Court on the factual basis recited in the Memorandum, or on the factual basis which Plaintiffs contend should have been used for that purpose:

(a) Constitutes an attempt by the City to invade a field which the Commerce Clause reserved for Federal regulation;

(b) Constitutes an attempt by the City to regulate a particular interstate activity over which Congress 547 had already exercised supervision or had already indicated a clear intention so to do;

(c) Constitutes an attempt by the City to regulate a particular activity; found by the Court to be essentially local in character, over which Congress has not yet undertaken regulation and has not yet shown a clear intent so to do, and which has been exercised by the City authorities in such an arbitrary or discriminatory manner as to cause an undue burden on interstate commerce;

(d) Constitutes an attempt by the City to regulate Transfer's passenger vehicles which are exempted "public passenger vehicles" as being devoted exclusively in a "public utility operation" under the laws of the State of Illinois.

7. Similarly the inclusion, or exclusion, of these omitted decisive facts and statutory requirements as part of the

material and pertinent facts to form the factual basis for the Court's findings has a decisive significance on the determination of the issues arising on Plaintiff's Motion for Temporary Injunction, whether—

(a) The consequences which would result from Plaintiffs' compliance with the Ordinance, as the Court required, or from Plaintiffs' noncompliance with the Ordinance as they contend to be their constitutional right, pending the final determination of the validity and applicability to Transfer's passenger vehicles of the Ordinance as construed by this Court, would cause irreparable injury and damage to Plaintiffs' property and property rights in violation of their constitutional rights; and

(b) The refusal to grant the temporary injunction to restrain enforcement of the Ordinance as construed by this Court pendente lite would cause irreparable damage to the Plaintiffs for which none of them would have an adequate remedy at law.

8. The decisive facts pointed out in the Complaint with respect to the Required Interstation Transfer Service and to which the Memorandum made no reference, and to which the Memorandum gave no effect whatsoever, include the same facts which were contained in the Complaint before this Court ten years ago in *United States v. Yellow Cab Co.*, 69 F. Supp. 170 (1946), but to which this Court's opinion in that case also failed to refer and give effect. But such omitted facts the Supreme Court of the United States in its Opinion in *United States v. Yellow Cab Co.*, 332 U. S. 218 (1947) overruling this Court's Opinion in that case, held were the decisive facts to which the then effective law (which is still the effective law) applied to require the conclusion that the portion of the through passenger service "from point of origin in one state to point of destination in another" state which consists of "the transportation of such passengers and their luggage between stations in Chicago * * * must be viewed in relation to the entire journey rather than in isolation. So viewed it is an integral step in the interstate movement." *United States v. Yellow Cab Co.*, 332 U. S. 218 at 228-229 (1947).

Ten years later, the same Parmelee, as Intervenor herein (then, and now the controlling stockholder of Yellow Cab Company, defendant in *United States v. Yellow Cab Co.*, supra), alone urged on this Court the same approach

which this Court has adopted in the Memorandum of viewing in the same isolation the same Required Interstation Transfer Service—which was established by the same Terminal Lines in the same Chicago Junction point to meet the same competitive conditions and the same federal statutory requirements which were before this 549 Court in that case—in spite of the fact that the Supreme Court of the United States in the same *United States v. Yellow Cab Co.*, supra, held ten years ago that such Required Interstation Transfer Service should be viewed only in relation to the remainder of the entire journey as an integral part in the interstate movement.

Under these extraordinary circumstances, Plaintiffs submit that it behooves this Court to take special heed of Parmelee's repudiation of this contention followed in the Memorandum, which Parmelee over the signature of the same Counsel who is also its sole Counsel of Parmelee, Intervenor herein before this Court, made in its verified Complaint filed in another Court since the hearings on the Motions covered by the Memorandum closed on November 17, 1955.

On December 1, 1955, Parmelee filed in the Superior Court of Cook County, State of Illinois, its verified Complaint for accounting against the same Terminal Lines, now parties Plaintiff in the case before this Court as defendants in that case (hereinafter referred to as "State Court Case"), based on the services and actual operations of its Agency contractual arrangements with them during the fifteen year period ending September 30, 1955.

Excepting for the one service embracing "transfer of passengers and accompanied hand baggage to passenger selected destinations in the downtown area of Chicago", listed in Parmelee's Complaint, and which is eliminated in the Agency Contract of Transfer, all the services 550 and actual operations of the Agency Contract of Transfer set forth in Plaintiffs' Complaint in the case before this Court which this Court omitted and to which this Court failed to refer and give effect to in the Memorandum, are also pointed out by Parmelee's Complaint in the State Court Case as relevant and material facts for purpose of accounting between Parmelee and the Terminal Lines on account of corresponding services and actual operations under Parmelee's Agency Contracts with the same Terminal Lines which were terminated on June 13, effective as of September 30, 1955.

In that Complaint, a photostatic copy of which is attached hereto as Plaintiffs' Exhibit 8, and a certified copy of which will be offered on the hearings herein on January 16, 1956, Parmelee pleads the following facts:

"3. There are eight (8) railroad terminal stations located in the downtown area of the city of Chicago into which some twenty-one (21) railroads operate and terminate their passenger services. Railroad travel through Chicago (except for minor instances) requires a change of trains from the incoming line to the outbound line. In some instances connecting carriers use the same railroad terminal station in which case, no transfer of passengers and their baggage between stations is required. In most instances, however, the connecting carriers use different railroad terminal stations thus necessitating transfer between stations.

"4. The Chicago Terminal Railroads are each common carriers as defined in Part I of the Interstate Commerce Act. Pursuant to the duty imposed by Section 1(4) of that Act through routes and reasonable joint rates have been established for railroad trips through Chicago involving connecting carriers in the Chicago terminal area with respect to said through routes and to meet the competition of connecting carriers using the same terminal station. The Chicago Terminal Railroads have provided by their tariffs for motor vehicles transfer between terminal stations by the issuance of transfer coupons on through tickets involving different terminal stations in Chicago. In such instances the transfer services and the charges made therefor were and are included in the established joint fares whether separately collected or not. At all times material Section 1(4) of the Interstate Commerce Act provided in this respect:

'It shall be the duty of every common carrier * * * engaged in the transportation of passengers or property * * * to establish through routes and just and reasonable rates, fares and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing reasonable compensation to those entitled thereto; * * *'

"5. The plaintiff and its predecessors in interest for over 102 years have operated as a so-called transfer company for the Chicago Terminal Railroads. Plaintiff's

operations have been conducted by means of limousines and motor trucks and have included the following functions:

(a) Transfer of passengers and accompanied hand baggage between railroad terminal stations;

(b) Transportation of passengers and accompanied hand baggage to passenger selected destinations in the downtown area of Chicago;

552 (c) Transfer of checked-through hand baggage and trunks between railroad terminal stations. Such baggage is handled by motor trucks separately from passenger transfer.

(These three functions will hereinafter sometimes be referred to as 'transfer services').

"6. During the period from January 1, 1935 to on or about September 30, 1955, the Chicago Terminal Railroads in order to provide reasonable facilities for the through routing of passengers and baggage in Chicago as required by Section 1(4) of the Interstate Commerce Act, continuously engaged plaintiff to transfer passengers and accompanying baggage between railroad terminal stations or from railroad terminal stations to passenger designated downtown Chicago destinations, and to transfer checked-through baggage and trunks between railroad terminal stations. * * * Plaintiff under said agreements was required to meet all trains and to provide sufficient facilities and personnel available at all times to transfer all passengers and their accompanying or checked-through baggage, to whom Chicago transfer coupons were sold or issued on through or combination railroad tickets.

"7. Said agreements required plaintiff to acquire, operate and maintain buildings, structures, vehicles, equipment and facilities specially designed for and dedicated to such transfer services and to secure and establish trained and continuously supervised special personnel in the rendition of such transfer services, which services were required to be adequate, reliable and dependable. * * *

"8. Under said agreements, the obligation of each of the Chicago Terminal Railroads to provide payment to plaintiff for the transfer services rendered or made available was fixed at an agreed upon charge per transfer coupon to be paid by the outbound carrier. * * *

These specified charges applied whether plaintiff performed all of the services possible for each passenger comprising the meeting of all trains, the transfer of the

passenger, his accompanying baggage plus his checked-through baggage, or only a part of such transfer services

553 "9. * * * Under said agreements all such transfer coupons were issued or sold by agents of originating railroads located throughout the United States at the time through or combination railroad tickets were sold * * *"

PLAINTIFFS' EXCEPTIONS TO PARMELEE'S
PROPOSED CONCLUSIONS OF LAW.

9. Plaintiffs Except to Parmelee's Proposed Conclusions of Law which repeat or revise Defendants' Proposed Conclusions of Law, on the same grounds on which Plaintiffs' Exceptions to the Defendants' Proposed Conclusions of Law are based, as set forth under the appropriate headings in Part One and Part Two of Plaintiffs' Exceptions to Defendants' Proposed Conclusions of Law.

10. Plaintiffs Except to Parmelee's Proposed Conclusions of Law on the following additional grounds:

(a) Parmelee's Proposed Conclusions of Law which purport to bear on the validity or applicability of the Ordinance described in the following language:

(1) "Section 20-2 of the Ordinance"; and "Section 28-1 of the Ordinance" (Parmelee's Proposed Conclusion numbered "2");

(2) "Chapter 28 of the Ordinance" (Parmelee's Proposed Conclusion numbered "3");

(3) "the Ordinance" (Parmelee's Proposed Conclusion numbered "4");
are fatally defective.

It is the Ordinance as construed by this Court which has legal significance; and that construction expressed in the Memorandum is that it is a grant of power to the Commissioner and the City Council to forbid, on grounds of public convenience and necessity, the use of the streets of Chicago to Transfer's passenger vehicles for specific
554 operations;

(b) Parmelee's Proposed Conclusions of Law which purport to bear on the validity or applicability of the Ordinance, however expressed, which purport to relate to Transfer's operations are fatally defective. The operations to which these Proposed Conclusions of Law relate are those which the Memorandum erroneously found to be

Transfer's operations; but the operations of Transfer which the Court should have found and to which the Ordinance as construed by the Court should be related are the undisputed services and actual operations under the Agency Contract of Transfer which are pleaded in Plaintiffs' Complaint.

11. Plaintiffs Except to the last sentence of Parmelee's Conclusions of Law numbered "4", which reads:

"Transfer is not at liberty to complain of potential arbitrary and unlawful administration of the ordinance until it has applied for and been improperly refused such license."

on the following grounds:

(a) This sentence (other than the word "improperly") repeats the language of a portion of the City's proposed Conclusions of Law numbered "3" and is objectionable on the grounds set forth in Plaintiffs' Exceptions thereto in the appropriate headings under Part One and Part Two thereof respectively;

(b) This sentence (with or without the word "improperly" contained therein) is objectionable on the following additional ground:

The Acting Corporation Counsel of the City of Chicago, one of the Defendants herein, publicly announced in a Chicago newspaper the following, of which this Court may take judicial notice. This announcement confirmed the facts set forth by Plaintiffs' Exceptions in their Exceptions (Part One pages 46-7(h)) with respect to maximum terminal license quota. The Chicago Daily Sun-Times of December 14, 1955 printed a story headed "Upholds Parmelee's Taxicab Service"; in which appeared the following:

"John C. Melaniphy, acting city corporation counsel, said the city would not act until officials had a chance to study Judge La Buy's formal order, expected several days hence.

"The question is," said Melaniphy, "if Railroad Transfers has to have vehicle licenses, can they be issued regardless of the fact that the taxi license quota set by the City Council is exhausted? The judge would have a right to order the city to issue the licenses as a matter of public convenience and necessity."

A photostatic copy of the heading of the first page and

of the third page of the issue is attached hereto as Exhibit 9; the original will be presented at the hearing on January 16th.

Plaintiffs suggest to this Court that should there be any question or doubt with respect to the fact of the continued and uninterrupted exhaustion of the maximum quota of terminal vehicle licenses at the effective date prior to October 1, 1955 of the Ordinance as amended on July 25, 1955 to the present time, this Court at the hearing on January 16, 1956 should inquire of that fact from the Acting Corporation Counsel or his representative attending that hearing.

12. Plaintiffs Except to Parmelee's Proposed Conclusion of Law numbered "4" on the following special ground:

This Conclusion of Law is responsive to this Court's findings of Law in the Memorandum.

556 The Memorandum offers no explanation or explainable ground for the Court's erasure of the last fifty years of rate making history under the Act to apply adjudicated case law of the period 1887 to 1906 during which this Section 1(4) was not in the Act, to the meager facts which the Court carved out of the Complaint for relation by the Ordinance as amended on July 26, 1955 as construed by the Court to reach the decisions announced by the Memorandum.

By so doing, the Memorandum has produced a situation so anomalous in the history of Federal jurisprudence as to require a critical review and reconsideration of the factual and legal basis of this Court's announced Findings in the Memorandum before the Court enters its final decision in this case.

The anomalous situation is created by the approach used in the Memorandum for the solution of the current problems arising with respect to the appropriate recognition of competent governmental authority in the field of regulation of the integrated national transportation system which the provisions of the Transportation Act of 1940 created for this country of ours, to reflect the constant and progressive advances in our civilization during the last fifty years.

This approach is that—as constant and progressive advances in civilization during the last half century have produced problems which cause headaches to the Judicial

arm of our Federal government, the thing for the Federal Court to do, is to erase that civilization so as to eliminate these headaches by throwing back to state governmental agencies the authority and obligation to solve these current problems through the philosophy of the prior period which reflected a mode of living which was doomed to extinction fifty years ago.

557

Conclusion.

The Memorandum is grounded on an untenable foundation of fact and law. The Memorandum has no place in the records of this Court.

Respectfully submitted,

Benjamin F. Goldstein,
Amos M. Mathews,

Attorneys for Plaintiff Terminal Lines.

Benjamin F. Goldstein,
Albert J. Meserow,

*Attorneys for Plaintiff Railroad
Transfer Service, Inc.*

Benjamin F. Goldstein,
209 South LaSalle Street,
Chicago 4, Illinois,
CEntral 6-7577.

Amos M. Mathews,
Room 280 Union Station Building,
Chicago 6, Illinois,
RAndolph 6-6900.

Albert J. Meserow,
231 South LaSalle Street,
Chicago 4, Illinois,
STate 2-8500.

558

Exhibit 8.

559 State of Illinois }
County of Cook } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

Parmelee Transportation Company, a corporation,

Plaintiff,

vs.

Earl D. Padrick, as agent for the Western Passenger Association, Chicago Terminal Lines — The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Chicago & Eastern Illinois Railroad Company, Chicago and Northwestern Railway Company, Chicago Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, Chicago Indianapolis and Louisville Railway Company, Chicago Milwaukee, St. Paul and Pacific Railroad Company, Chicago North Shore and Milwaukee Railway, Chicago, Rock Island and Pacific Railroad Company, Chicago South Shore and South Bend Railroad, Erie Railroad Company, Grand Trunk Western Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Minneapolis, St. Paul and Sault Ste Marie Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Wabash Railroad Company, The Baltimore and Ohio Chicago Terminal Railroad Company, Chicago and Western Indiana Railroad Company, and Chicago Union Station Company,

In
Equity

Defendants.

COMPLAINT.

Plaintiff, Parmelee Transportation Company, a corporation (hereinafter "Parmelee") by its Attorney Lee A.

Freeman, complains of the herein described defendants and states:

1. Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and is duly qualified to do business in the State of Illinois. Plaintiff at all times material has owned and operated motor vehicles duly licensed by the City of Chicago under Chapter 28 of the Municipal Code of Chicago, to operate as public passenger terminal vehicles. By such licenses, plaintiff has been authorized to use the public streets and places in the City of Chicago in the rendition of its transfer services as hereinafter described. At all times material, plaintiff has fully complied with the police power requirements imposed by the city of Chicago in this connection to insure the public safety, convenience and welfare.

2. The status and certain relevant activities of the defendants are:

Earl D. Padrick, of Chicago, Illinois, was appointed and acted at all times material, and does now act, as agent for the Western Passenger Association, Chicago Terminal Lines.

Western Passenger Association, Chicago Terminal Lines is an unincorporated voluntary association of railroad and depot companies formed and organized by the railroads whose lines terminate in the city of Chicago, for the purpose among others of dealing with terminal and passenger transfer problems and procedures in the Chicago terminal area. The Western Passenger Association, Chicago Terminal Lines at all times material had been delegated authority by each of the member railroad and depot companies to act for and on its behalf in reaching understandings and agreements with plaintiff for the performance of transfer services in the Chicago terminal area.

The Atchison, Topeka and Santa Fe Railway Company is a railroad corporation organized in the State of Kansas.

560 The Baltimore and Ohio Railroad Company is a railroad corporation organized in the State of Maryland.

The Chesapeake and Ohio Railway Company is a railroad corporation organized in the State of Virginia.

Chicago and Eastern Illinois Railroad Company is a railroad corporation organized in the State of Indiana.

Chicago and Northwestern Railway Company is a railroad corporation organized in the State of Wisconsin.

Chicago, Burlington & Quincy Railroad Company is a railroad corporation organized in the State of Illinois.

Chicago Great Western Railway Company is a railroad corporation organized in the State of Illinois.

Chicago, Indianapolis and Louisville Railway Company is a railroad corporation organized in the State of Indiana.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a railroad corporation organized in the State of Wisconsin.

Chicago, North Shore and Milwaukee Railway is a railroad corporation organized in the State of Illinois.

Chicago, Rock Island and Pacific Railroad Company is a railroad corporation organized in the State of Delaware.

Chicago, South Shore and South Bend Railroad is a railroad corporation organized in the State of Indiana.

Erie Railroad Company is a railroad corporation organized in the State of New York.

Grand Trunk Western Railroad Company is a railroad corporation organized in the States of Michigan and Indiana.

Gulf, Mobile and Ohio Railroad Company is a railroad corporation organized in the States of Alabama, Mississippi and Tennessee.

Illinois Central Railroad Company is a railroad corporation organized in the State of Illinois.

Minneapolis, St. Paul and Sault Ste. Marie Railroad Company is a railroad corporation organized in the State of Minnesota.

The New York Central Railroad Company is a railroad corporation organized in the States of Illinois, New York, Ohio, Indiana, Pennsylvania and Michigan.)

The New York, Chicago and St. Louis Railroad Company is a railroad corporation organized in the States of Illinois, Ohio, New York, Pennsylvania and Indiana.

The Pennsylvania Railroad Company is a railroad corporation organized in the State of Pennsylvania.

Wabash Railroad Company is a railroad corporation organized in the State of Ohio.

Each of the railroads, defendant herein, does business in the State of Illinois and all of said railroads are hereinafter collectively referred to as "Chicago Terminal Railroads".

The Baltimore and Ohio Chicago Terminal Railroad Company is a corporation organized in the State of Illinois which owns and operates the Grand Central Station in the city of Chicago.

The Chicago and Western Indiana Railroad Company is a corporation organized in the State of Illinois which owns and operates the Dearborn Street Station in the city of Chicago.

The Chicago Union Station Company is a corporation organized in the State of Illinois which owns and operates the Union Station in the city of Chicago.

3. There are eight (8) railroad terminal stations located in the downtown area of the city of Chicago into which some twenty-one (21) railroads operate and terminate their passenger services. Railroad travel through Chicago (except for minor instances) requires a change of trains from the incoming line to the outbound line. In some instances connecting carriers use the same railroad terminal station, in which case, no transfer of passengers and their baggage between stations is required. In most instances, however, the connecting carriers use different railroad terminal stations thus necessitating transfer between stations.

4. The Chicago Terminal Railroads are each common carriers as defined in Part I of the Interstate Commerce Act. Pursuant to the duty imposed by Section 1 (4) of that Act through routes and reasonable joint rates have been established for railroad trips through Chicago involving connecting carriers in the Chicago terminal area with respect to said through routes and to meet the competition of connecting carriers using the same terminal station. The Chicago Terminal Railroads have provided by their tariffs for motor vehicles transfer between terminal stations by the issuance of transfer coupons on through tickets involving different terminal stations in Chicago. In such instances the transfer services and the charges made therefor were and are included in the established joint fares whether separately collected or not. At all times material Section 1 (4) of the Interstate Commerce Act provided in this respect:

"It shall be the duty of every common carrier * * * engaged in the transportation of passengers or property * * * to establish through routes and just and reasonable rates, fares and charges applicable there-

to, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing reasonable compensation to those entitled thereto; * * *"

5. The plaintiff and its predecessors in interest for over 102 years have operated as a so-called transfer company for the Chicago Terminal Railroads. Plaintiff's operations have been conducted by means of limousines and motor trucks and have included the following functions:

(a) Transfer of passengers and accompanied hand baggage between railroad terminal stations;

(b) Transportation of passengers and accompanied hand baggage to passenger selected destinations in the downtown area of Chicago;

(c) Transfer of checked-through hand baggage and trunks between railroad terminal stations. Such baggage is handled by motor trucks separately from passenger transfer.

(These three functions will hereinafter sometimes be referred to as "transfer services".)

6. During the period from January 1, 1935 to on or about September 30, 1955, the Chicago Terminal Railroads in order to provide reasonable facilities for the through routing of passengers and baggage in Chicago as required by Section 1 (4) of the Interstate Commerce Act, continuously engaged plaintiff to transfer passengers and accompanying baggage between railroad terminal stations or from railroad terminal stations to passenger designated downtown Chicago destinations, and to transfer checked-through baggage and trunks between railroad terminal stations. These transfer services were rendered under agreements entered into by plaintiff with the various Chicago Terminal Railroads and with the Western 562 Passenger Association Chicago Terminal Lines for and on behalf of each of the defendants. By these agreements, the Chicago Terminal Railroads engaged plaintiff to render said transfer services and agreed that no other person, firm or corporation would be granted any right or privilege in connection with, or be engaged or permitted to perform such transfer services in Chicago on their behalf. Plaintiff under said agreements was required

to meet all trains and to provide sufficient facilities and personnel available at all times to transfer all passengers and their accompanying or checked-through baggage, to whom Chicago transfer coupons were sold or issued on through or combination railroad tickets.

7. Said agreements required plaintiff to acquire, operate and maintain buildings, structures, vehicles, equipment and facilities specially designed for and dedicated to such transfer services and to secure and establish trained and continuously supervised special personnel in the rendition of such transfer services, which services were required to be adequate, reliable and dependable. During all times material, plaintiff rendered adequate, reliable and dependable transfer services at reasonable rates and charges and at all times made available sufficient buildings, structures, vehicles, equipment, facilities and trained and efficient personnel to conveniently handle all transfer traffic which might be presented, in fulfillment of all terms and conditions of its agreements with each of the defendants.

8. Under said agreements, the obligation of each of the Chicago Terminal Railroads to provide payment to plaintiff for the transfer services rendered or made available was fixed at an agreed upon charge per transfer coupon to be paid by the outbound carrier. The applicable rates of compensation for transfer coupons have been fixed by agreements from time to time, such rates being as follows for the period since January 1, 1935:

Commencing	Adults	Children, Charity, Clergy and other half fares (where applicable)	Military Furlonghees
January 1, 1935.....	\$.75	\$.375	\$ —
February 10, 1942....	.85	.425	—
July 1, 1942.....	.85	.425	.60
July 1, 1945.....	.85	.425	.50
January 1, 1948.....	1.00	.50	.50
September 1, 1951....	1.00	.50	.80
June 1, 1952.....	1.05	.525	.85
January 1, 1954.....	1.125	.5625	.85
April 1, 1954.....	1.20	.60	.85
October 1, 1954.....	1.22	.61	.85

These specified charges applied whether plaintiff performed all of the services possible for each passenger com-

prising the meeting of all trains, the transfer of the passenger, his accompanying baggage plus his checked-through baggage; or only a part of such transfer services (with the exception of a special rate of 50 cents per capita established on December 1, 1942 for the transfer of military baggage in situations where the military personnel involved were carried through Chicago by switching operations on a single train).

9. At all times material the Chicago Terminal Railroads retained and exercised complete control over and domination of the entire system, practice and procedure of issuing, selling, identifying, collecting and accounting for Chicago transfer coupons. Under said agreements all such transfer coupons were issued or sold by agents of originating railroads located throughout the United States at the time through or combination railroad tickets were sold, and the Chicago Terminal Railroads represented and warranted to plaintiff that:

(a) At the time of issuance, in the event baggage 563 was checked-through by the passenger, the issuing railroad agent would be required to and would punch the transfer coupon "BC" to afford plaintiff appropriate compensation.

(b) In all instances where a passenger checked-through his baggage and failed to use the plaintiff's limousine transfer service in Chicago, the agent of the outbound carrier would be required to and would collect his transfer coupon and such carrier would be required to and would report to plaintiff the total and accurate number of such coupons collected, as a basis for the receipt of payment for the service rendered of transferring checked-through baggage between stations.

Plaintiff was required by its agreements with the Chicago Terminal Railroads to accept all checked-through baggage and handle such baggage efficiently and dependably. But unless a passenger presented his transfer coupon at the time he personally used the plaintiff's limousine services, or the transfer coupon was properly punched by the issuing carrier and properly collected and accounted for by the outbound carrier, under the agreed system and method, the plaintiff would be unjustly deprived of compensation for transferring checked-through baggage for

which it was entitled to receive the full transfer coupon charge, and would be wholly without means of ascertaining that it had been deprived of such compensation.

Under said system and method of issuing, selling, identifying, collecting and accounting for such Chicago transfer coupons, plaintiff was repeatedly induced and required to and did repose special confidence and trust in each of said Chicago Terminal Railroads to properly and accurately issue, sell, punch, identify, collect, account to and pay plaintiff for each and every Chicago transfer coupon sold or issued which entitled the passenger to use the plaintiff's transfer services. By reason thereof, the Chicago Terminal Railroads occupied a fiduciary position toward the plaintiff and were required to exercise a high degree of care to assure the integrity and accuracy of the railroad transfer coupon system so that plaintiff would receive its full measure of agreed upon compensation.

10. Notwithstanding the fiduciary obligation placed upon and assumed by the Chicago Terminal Railroads to assure the integrity and accuracy of the railroad transfer coupon system, and contrary to and in violation of their agreements with plaintiff, the Chicago Terminal Railroads, although frequently requested so to do and although purporting to comply with plaintiff's requests so to do, have failed to issue, punch, identify, collect and account for a large and substantial volume of transfer coupons upon which baggage was checked-through and for which plaintiff performed transfer services.

From time to time during the period here involved, some of the Chicago Terminal Railroads and the Western Passenger Association, Chicago Terminal Lines acting on their behalf have admitted that large and substantial amounts of transfer coupons issued and for which baggage was actually transferred by the plaintiff either had not been punched "BC" or otherwise properly identified, or if so punched or identified, had not been collected and accounted for to the plaintiff. Notwithstanding such admissions and, in some instances, their subsequent accounting for a portion of such coupons, the defendants during and throughout said entire period have concealed and withheld from the plaintiff, facts and information known or readily available to them establishing the true amount and volume of transfer coupons in respect of which the plaintiff had rendered transfer services but for which no cou-

pons were collected by the plaintiff and no accounting
564 therefor or report thereof was made to the plaintiff.

11. Contrary to and in violation of their agreements with plaintiff, their fiduciary obligations toward plaintiff and their obligations under Section 1 (4) of the Interstate Commerce Act, the Chicago Terminal Railroads although frequently requested so to do, have failed and refused and continue to fail and refuse to account to and pay plaintiff for all of the transfer coupons sold or issued as aforesaid for which transfer services were rendered and made available. Plaintiff has thereby been deprived of large sums of money constituting its reasonable and agreed compensation. The exact amounts of such sums of money due and owing to plaintiff are unknown to plaintiff for the reasons aforesaid. Plaintiff is informed and believes and upon such information and belief alleges that upon an accounting by defendants there will be found due to plaintiff by reason of transfer coupons issued and for which transfer services were rendered and made available by plaintiff, but for which payment to plaintiff has been improperly withheld, an amount in excess of \$7,000,000.00.

12. Notwithstanding the agreements by the Chicago Terminal Railroads to utilize plaintiff's services and facilities in the transfer of passengers and baggage in Chicago and not to engage or permit any other person, firm or corporation to perform such transfer services on behalf of any of them, and notwithstanding that the rate of compensation per transfer coupon was in part fixed in consideration of the volume of transfer traffic handled by plaintiff, the Chicago Terminal Railroads in breach of said agreements and in violation of the terms thereof jointly and severally have repeatedly and wilfully diverted or caused to be diverted a large volume of transfer traffic in Chicago to other persons, firms or corporations engaged by them and have thus deprived plaintiff of substantial revenues which were properly due plaintiff and to which it was entitled under its agreements with them. Plaintiff has been obliged to incur the costs and expenses of providing and maintaining in readiness for service, structures, vehicles, equipment and personnel to handle traffic for which transfer coupons were actually issued and sold by the defendants, but which was diverted from the plaintiff as the direct result of said wilful violations and breaches

of said agreements. In many instances, passenger transfer traffic was improperly diverted from the plaintiff, without its knowledge, but checked-through baggage for such passengers was handled by plaintiff in ignorance of the circumstance that no provision was being made for the collection or receipt of the agreed upon compensation. Plaintiff does not have knowledge of the exact amounts of revenues of which it has thus been improperly deprived, but is informed and believes and upon such information and belief alleges that upon an accounting by defendants there will be found due to plaintiff by reason of such improper diversion of traffic, an amount in excess of \$1,500,000.00.

13. At all times material, defendants were in a position of special trust and confidence toward plaintiff and had an obligation as a fiduciary to account to plaintiff for all transfer coupons sold or issued and pay plaintiff the agreed compensation for its services rendered in respect thereof and also to account to plaintiff and pay plaintiff for all transfer traffic improperly diverted from plaintiff in breach of and in violation of the terms of said agreements.

Prior to the commencement of this action plaintiff duly demanded of defendants that they account for their acts as aforesaid, and pay over to plaintiff the amounts due and owing, but defendants have failed and refused so to do and wilfully persist in such failure and refusal.

565 The multiple transaction and multiple parties here involved require the adjudication of accounts of a complicated character.

Plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays:

A. That this court enter a decree requiring each defendant to account to plaintiff for all of said thru or combination tickets sold and to account to and pay over to plaintiff the agreed upon compensation for each of said transfer coupons sold or issued during the period of time hereinbefore alleged, less only credits by reason of payments already made to plaintiff.

B. That this court enter a decree requiring each defendant to account to plaintiff for all transfer business which such defendants have improperly diverted from plaintiff as heretofore alleged.

C. That after hearing, this court enter a decree requiring defendants jointly and severally, as their respective interests shall be made to appear, to pay over to plaintiff the sum of \$8,500,000.00 by reason of the accounting, damages and losses heretofore described.

D. That the court make such other findings and grant such other and further relief as to this court may seem equitable and appropriate in the premises.

Attorney for Plaintiff.

Lee A. Freeman
Attorney for Plaintiff
208 S. LaSalle Street
CE 6-1763

State of Illinois }
County of Cook } ss

Charles E. Rheintgen, being first duly sworn on oath deposes and says that he is the Vice President of Parmelee Transportation Company, a corporation, plaintiff herein; that he is authorized to act on behalf of plaintiff; that he has read the within and foregoing Complaint, by him subscribed; that he knows the contents thereof and that the same are true in substance and in fact, except where stated to be under information and belief and as to those statements, he verily believes them to be true.

Subscribed and sworn to before me this _____ day of _____, A.D. 1955.

Notary Public.

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CHICAGO DAILY SUN-TIMES

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WEDNESDAY, DECEMBER 14, 1955

CHICAGO SUN-TIMES, WEDNESDAY, DECEMBER 14, 1955

Upholds Parmelee's Taxicab Service

A city ordinance permitting Parmelee Transportation Co. to operate a special type of taxi service has been upheld by Judge Walter J. La Buy in U. S. District Court.

His ruling was a blow at the operations of the new Railroad Transfer Service, which took over hauling of passengers between railroad stations from Parmelee.

The new firm does not hold the public vehicle licenses required by the ordinance—enacted last July 26—which are held by Parmelee.

Attorneys for Railroad Transfer indicated Tuesday they would appeal to the U.S. Court of Appeals. This would stay the city from enforcing the recent ordinance by ruling Railroad Transfer vehicles off the streets.

Judge La Buy also held that

Railway Transfer is not operating in interstate commerce and, therefore, is subject to city ordinances. The new firm's attorneys, Benjamin F. Goldstein and Albert Meserow, had argued that the service was interstate commerce and, therefore, subject only to federal laws.

The firm was organized by John L. Keeshin, veteran trucking executive; at the request of railroads using the Chicago passenger stations.

The case was a factor in a Senate subcommittee investigation of the affairs of Hugh W. Cross, who subsequently resigned as chairman of the Interstate Commerce Commission.

Cross, a former lieutenant governor of Illinois, was accused of indiscreet conduct in holding conversations with rail-

road representatives prior to the signing of the Railroad Transfer contract.

Railroad Transfer and 21 railroads had sought a temporary injunction against the city ordinance, which Judge La Buy denied.

Lee A. Freeman, Parmelee general counsel, called the verdict "a complete vindication of our position."

John C. Melaniphy, acting city corporation counsel, said the city would not act until officials had a chance to study Judge La Buy's formal order, expected several days hence.

"The question is," said Melaniphy, "if Railroad Transfers has to have vehicle licenses, can they be issued, regardless of the fact that the taxi license quota

set by the City Council is exhausted? The judge would have a right to order the city to issue the licenses as a matter of public convenience and necessity."

Later, at a hearing before the Illinois Commerce Commission, Freeman obtained a continuance till March 16 on Parmelee's petition for a certificate to operate a baggage and passenger carrier service among the railroad stations.

The continuance was asked in view of other litigation involved in the battle between the two transfer companies.

(566)

567

Certificate of Service.

I hereby certify that I have this day served the foregoing document upon the following named counsel by mailing copies to them by first-class United States mail, postage prepaid as follows:

To Joseph F. Grossman,
Special Assistant Corporation Counsel,
City of Chicago,
City Hall,
Chicago, Illinois,
Attorney for Defendants,
City of Chicago, et al.

To Lee A. Freeman,
105 South La Salle Street,
Chicago, Illinois,
Attorney for Intervenor,
Parmelee Transportation Co.

Dated at Chicago, Illinois January 11, 1956.

Amos M. Mathews,
Attorney for Plaintiffs.

568 And afterwards on, to wit, the 12th day of January, 1956 there was filed in the Clerk's office of said Court a certain Memorandum in words and figures following, to wit:

569 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

SUPPLEMENTAL MEMORANDUM.

The court has considered the objections and exceptions to the defendants' proposed Findings of Fact, Conclusions of Law, and Order for Summary Declaratory Judgment and also plaintiffs' suggested Findings of Fact as well as the numerous criticisms of the court's memorandum.

Plaintiffs urge that the court's failure to refer and consider §1(4) of the Interstate Commerce Act and also §15(3) thereof render its decision void. Page 2 of the court's memorandum cites certain statutory sections as follows:

"§1(3), §4, §3(4)". The inclusion of §4 stems from a typographical error and it is corrected to refer to the proper section; that is §1(4).

From this error counsel for plaintiffs contend that the court erroneously relied upon cases, cited on pages 12-13 of its memorandum, which do not reflect the statutory obligation of carriers with respect to through routes and therefore its conclusion on the character of public utility operations and, in fact, the entire decision is without basis in law.

Concededly, neither §1(4) nor §15(3) were a part of the Interstate Commerce Act when the cited cases were determined. Section 1(4) by its terms imposes a "duty" upon railroads to furnish transportation upon reasonable request and to establish reasonable through routes with other carriers. Section 15(3), in general, grants to the Interstate Commerce Commission the power to establish through routes when it shall find, after hearings, that such routes are necessary in the public interest. The cases cited, and decided before 1906, indicate that railroads could not be compelled to establish through routes. By §15(3) authority is vested in the Interstate Commerce Commission to compel the establishment of through routes. Counsel conclude that insofar as these earlier cases show no statutory "duty" or compulsion upon carriers to establish through routes, they are inapplicable; that under §1(4) carriers are required to make such arrangements; that these arrangements are no longer dependent upon voluntary negotiations between the carriers, but that §1(4) compels a carrier, without order of the Commission, to establish such through routes. In *Thompson v. United States*, (1951) 343 U. S. 549, 555, the Supreme Court of the United States stated as follows:

"Under the Interstate Commerce Act, a carrier must not only provide transportation service at reasonable rates over its own line but has the additional duty 'to establish reasonable through routes with such other carriers, and just and reasonable rates * * * applicable thereto.' Through routes may be and ordinarily are, established by the voluntary action of connecting carriers. Since 1906, through routes may, also be established by the order of the Interstate Commerce Commission, * * *"

Thus, the "duty" contained in § 1(4) to establish through routes is usually exemplified, and continues to be the subject of voluntary action between the railroads as are the arrangements in the case at bar. Through routes are still matters created by voluntary action of the carriers, but since 1906 the Interstate Commerce Commission has the power under § 15(3) to compel such action where public necessity requires it.

Plaintiffs contend this "duty" under § 1(4) extends to providing interstation transfer for through passengers as an integral and essential part of the reasonable facilities for through routes. The tariff filed as an exhibit shows that not all railroads with through routes have arranged for interstation transfer of through passengers. The Interstate Commerce Commission noted this fact in *Status of Parmelee* (1953), 288 I. C. C. 95, as follows:

571 "A survey made by the respondent disclosed that there are approximately 400 points in the United States where passengers and their baggage are transferred between stations by local transfer companies for railroads. * * * There are numerous points, throughout the country, however, where the railroads have not assumed the responsibility for providing free transfer service and no such arrangements are maintained by them at those points. Although through tickets by way of those points are sold by the railroads, passengers traveling over such routes are required, by appropriate tariff provisions, to make their own transfer arrangements."

Interstation transfer arrangements in Chicago have been established voluntarily for business purposes in order to meet the competition of through routes over railroads operating out of common terminals. The court is of the opinion § 1(4) relating to through routes and § 3(4) relating to reasonable facilities for the interchange of traffic do not require the railroads to provide the transfer service between railroad terminals.

A further correction should be made with reference to the evidence considered on the motion for injunction to include reference to and consideration of the affidavits filed by the plaintiffs. The first sentence in the last para-

graph on page 10 of the memorandum is deleted and corrected to read as follows:

"The allegations of the verified complaint and all affidavits submitted by plaintiff are the basis for its application for injunctive relief."

In all other respects the court adheres to its memorandum of December 12, 1955 as filed.

Walter J. LaBuy,

Judge, United States District Court.

January 12, 1956.

Messrs. Benjamin F. Goldstein and

Albert J. Meserow,

209 S. LaSalle (4),

Amos M. Mathew, Esquire,

280 Union Station (6),

John C. Melaniphy,

Corporation Counsel,

City Hall,

Lee A. Freeman, Esquire,

105 S. LaSalle.

572 And on the same day, to wit, on the 12th day of January, 1956, being one of the days of the regular January term of said Court, in the record proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy, District Judge, appears the following entry, to wit:

573 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1883) * *

This cause coming on to be heard upon the verified complaint, the verified petition of Parmelee Transportation Company to intervene as a defendant, the plaintiffs' motion for preliminary injunction, the motion of defendant City of Chicago for summary judgment, and the court having also considered the affidavits and exhibits of all parties, together with the briefs and arguments of counsel, hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT.

1. Railroad Transfer Service, Inc., (hereinafter "Transfer"), one of the plaintiffs herein, has entered into a five year contract with plaintiff railroad companies (hereinafter "Terminal Lines") under which Transfer as an independent contractor has undertaken to transport by its motor vehicle operated under its direction and control passengers traveling through Chicago between railroad stations within the Chicago terminal area. Under said contract the parties agreed that Transfer shall exclusively service and transport between railroad stations passengers holding transfer coupons.

2. Terminal Lines provide interstation transfer services in Chicago as a means of meeting the competition of other railroad routings through Chicago involving only a single terminal station and, therefore, which do not require interstation transfers. Similar provisions for transfer of passengers between stations have been provided by railroads in other terminal areas, although in many such terminal areas passengers are required to make their own transfer arrangements between terminal stations even though traveling on through railroad tickets.

3. Transfer collects transfer coupons previously issued or sold to passengers by the railroads pursuant to tariffs applicable to joint fares published by the Commission and the Illinois Commerce Commission. Transfer is not a participant in such tariffs published by the railroads. The transfer coupons are redeemed by the outgoing Terminal Lines at rates of compensation fixed by said contract.

4. Transfer's operations began on October 1, 1955. Its operations are conducted over city streets and public places and are confined to the transportation for hire entirely within the City of passengers possessing through route railroad tickets covering trips between points outside and beyond the corporate limits of the City. More than 99% of all such through passenger service is in interstate commerce.

5. Chapter 28 of the Municipal Code of Chicago, as amended (hereinafter "Ordinance") a copy of which is attached to the complaint as Exhibit B, was passed by the City Council of the city of Chicago and became effective prior to October 1, 1955. The Ordinance provides for the licensing of four classes of public passenger vehicles, one

of which is designated as a terminal vehicle. Such licenses are issued, upon application, by the City Public Vehicle Commissioner if, upon investigation, he finds that the applicant is of proper character and reputation as a law-abiding citizen; that he has the requisite financial ability to render safe and comfortable transportation service, to maintain and replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period; that the vehicles proposed to be used are in safe operating condition with adequate body and seating facilities; and that adequate public liability and property damage insurance is provided.

6. Section 28-1 of the Ordinance defines "Public Passenger Vehicle" and "Terminal Vehicle" as follows:

575 "Public Passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Terminal vehicle" means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in Section 28-31.

7. Section 28-2 of the Ordinance is in part as follows:

"License required. It is unlawful for any person other than a metropolitan transit authority or public utility to operate any vehicle, or for any such person who is the owner of any vehicle to permit it to be operated, on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle."

All of the terminal stations of Terminal Lines and Steamship docks are located in the area described in Section 28-31.

8. Sections 28-31.1 and 28-31.2 provide as follows:

"28-31.1 Public convenience and necessity. No li-

cense for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in Section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.”

“In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. The public demand for such service;
2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;
3. The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;
4. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner.

28-31.2 Local Fares. The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided that children under 12 years of age, when accompanied by an adult, shall be carried at not more than half fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner.”

9. Transfer has not applied for nor sought licenses from the City of Chicago to operate its vehicles for hire over the city streets and public places as Public Passenger Vehicles of the Terminal Vehicle category.

577 10. Except as to maximum hours of service of employees, the Interstate Commerce Commission has not undertaken to exercise any supervision or regulatory control of the services performed by Transfer or the safety of its operation and equipment.

Conclusions of Law.

1. This court has jurisdiction of the subject matter and of the parties herein by virtue of Section 1331 and 1337 of the Judicial Code, 28 U. S. C. A., granting to district courts original jurisdiction of civil actions arising under the Constitution and laws of the United States involving a sum in excess of the requisite jurisdictional amount.

2. There is no genuine issue of fact involved in this controversy.

3. Transfer is not a public utility under the laws of Illinois and does not devote its vehicles exclusively to the operation of a public utility under the laws of Illinois.

4. Transfer owns and operates Public Passenger Vehicles of the Terminal Vehicle category, as defined in Section 28-1 of the Ordinance.

5. Transfer operates its motor vehicles on public ways of the City for the transportation of passengers for hire from place to place within the corporate limits of the City as provided in Section 28-2 of the Ordinance.

6. Chapter 28 of the Ordinance is a proper exercise of police power by the City in the interest of the safety, health and welfare of the public. The federal government has not undertaken to regulate the subjects over which the City has thus exercised its police power. The Congress of the United States has not indicated an intention to preclude local controls in this field. The imposition upon Transfer of reasonable city regulations and controls appropriate to the public safety, health and welfare does not constitute an invalid or unconstitutional burden upon interstate commerce.

7. The Ordinance does not grant the Public Vehicle License Commissioner and the City Council an arbitrary right to refuse a terminal vehicle license. It confers a discretionary power to grant or withhold such license under the police power delegated by the city

578

to control traffic on the city streets and for other purposes in the interest of public health, safety and welfare.

Walter J. LaBuy,
Judge, United States District Court.

January 12, 1956.

Messrs. Benjamin F. Goldstein and
Albert J. Mezerow,
209 S. La Salle (4),

Amos M. Mathew, Esquire,
280 Union Station (6);

Lee A. Freeman, Esquire,
208 S. La Salle,

John C. Melaniphy,
Corporation Counsel,
City Hall.

579

IN THE UNITED STATES DISTRICT COURT.

* * * (Caption—55-C-1883) * * *

JUDGMENT ORDER.

This cause coming on to be heard upon the verified complaint, the verified petition of Parmalee Transportation Company to intervene as a defendant, the plaintiffs' motion for preliminary injunction, the motion of defendant City of Chicago for summary judgment, and the court having also considered the affidavits and exhibits submitted by all parties, together with the briefs and arguments of counsel, and being fully advised in the premises, it is hereby

Ordered, Adjudged And Decreed that the motion of plaintiffs for a preliminary injunction restraining the defendants City of Chicago and its officers from enforcing or attempting to enforce the provisions of Chapter 28 of the Municipal Code of Chicago against the plaintiff, Railroad Transfer Service, Inc., be and it is hereby denied;

It Is Further Ordered, Adjudged And Decreed that the temporary restraining order heretofore entered by this court on October 24, 1955, extended from time to time, be and it is hereby dissolved;

It Is Further Ordered, Adjudged And Decreed that summary judgment be entered in favor of the defendants against the plaintiffs, with costs, and that this action be and it is hereby dismissed.

Walter J. La Buy,

Judge, United States District Court.

January 12, 1956.

580 And afterwards on, to wit, the 13th day of January, 1956 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal (Certificate of Mailing attached thereto) in words and figures following, to wit:

581

IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Wabash Railroad Company; and Railroad Transfer Service, Inc., corporations,

Plaintiffs,

vs.

City of Chicago, a municipal corporation; Richard J. Daley, not individually but as Mayor of said city; John C. Melaniphy, not individually but as Acting Corporation Counsel of said city; Timothy P. O'Connor, not individually but as Commissioner of Police of said city, and William P. Flynn, not individually but as Public License Commissioner of said city,

Defendants.

Civil Action
No. 55-C-
1883.

Equitable
Relief
Demanded.

NOTICE OF APPEAL.

582 Notice is hereby given that The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Wabash Railroad Company; and Railroad Transfer Service, Inc., plaintiffs above-named, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the judgment order entered in this action on January 12, 1956.

Benjamin F. Goldstein,
209 South La Salle Street,
Chicago 4, Illinois,
CEntral 6-7577,

Amos M. Mathews,
Room 280, Union Station Building,
Chicago 6, Illinois,
RAndolph 6-6900.

583

Albert J. Meserow,
231 South LaSalle Street,
Chicago 4, Illinois,
STate 2-8500,

Attorneys for Plaintiffs-Appellants above named.

584 United States of America, }
Northern District of Illinois. } ss:

* * (Caption—55-C-1883) * *

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify, that on January 13, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Joseph F. Grossman, Special Assistant Corporation
Counsel,
City of Chicago,
City Hall, Chicago 2, Illinois.

Lee A. Freeman,
208 S. La Salle Street,
Chicago 4, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 13th day of January, 1956..

Roy H. Johnson,

Clerk,

By Gizella Butcher,

Deputy Clerk.

(Seal)

590 And on the same day, to wit, on the 13th day of January, 1956, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. La Buy, District Judge, appears the following entry, to wit:

591 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

ORDER FOR INJUNCTION DURING PENDENCY OF APPEAL.

This action coming on for hearing before the Court upon the motion of Plaintiffs-Appellants for injunction during pendency of appeal, and the Court being duly advised in the premises,

It Is Ordered, that during the pendency of the appeal in this action to the Court of Appeals of the Seventh Circuit, the defendants, City of Chicago, a municipal corporation, Richard J. Daley, Mayor of said city, John C. Melaniphy, Acting Corporation Counsel of said city, Timothy J. O'Connor, Police Commissioner of said city, and William P. Flynn, Public Vehicle License Commissioner of said city, and their agents, officers, servants, employees and attorneys, and any persons acting in concert with or participating with them, and any and all persons acting, by, with, through or under them, or by or through their
592 order, be, and they hereby are enjoined and restrained from enforcing or attempting to enforce Chapter 28 of the Municipal Code of Chicago (commonly known as the "Public Passenger Vehicle" Ordinance) against the Plaintiffs-Appellants or against the officers, agents, servants or employees of the aforesaid Plaintiffs-Appellants.

It Is Further Ordered, that the aforesaid Plaintiffs-Appellants shall file supersedeas bond herein in the penal sum of \$50,000, conditioned as required by law to save the Appellees harmless in the event the Plaintiffs-Appellants do not make good their appeal.

This Order issued at 2:13 o'clock P. M., this 13th day of January, 1956.

Walter J. La Buy,
United States District Judge.

597 And afterwards on, to wit, the 23rd day of January, 1956 came the Plaintiffs-Appellants by their attorneys and filed in the Clerk's office of said Court their certain Designation of Contents of Record in words and figures following, to wit:

598 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1883) * *

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL.

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, the plaintiffs-appellants hereby designate the following for inclusion in the record on appeal to the United States Court of Appeals for the Seventh Circuit, taken by notice of appeal filed on January 13, 1956, the same being the complete record and all the proceedings and evidence in this action:

(1) Statement required by Rule No. 10(b) of the United States Court of Appeals for the Seventh Circuit.

(2) Plaintiffs' Complaint.

599 (3) Plaintiffs' motion for a temporary restraining order, and affidavits of H. B. Siddall and Alex Baxter attached thereto.

(4) Temporary restraining order, notice and order to show cause, entered October 24, 1955.

(5) Motion of Parmelee Transportation Company to Intervene as a Defendant.

(6) Petition of Parmelee Transportation Company to Intervene as a Defendant.

(7) Order Extending Temporary Restraining Order, entered October 28, 1955.

(8) Order Extending Temporary Restraining Order, entered November 7, 1955.

(9) Memorandum and order granting Parmelee Transportation Company leave to intervene.

(10) Affidavit of Leonard H. Bass, filed by Parmelee Transportation Company.

(11) Affidavit of Charles E. Rheintgen, filed by Parmelee Transportation Company.

(12) Plaintiffs' brief in support of temporary injunction.

(13) Order Extending Temporary Restraining Order, entered November 10, 1955.

(14) Memorandum of Intervenor, Parmelee Transportation Company, In Opposition to Motion for Temporary Injunction.

(15) Motion of Defendants for Summary Judgment.

(16) Plaintiffs' Reply Brief.

(17) Plaintiffs' Exhibit No. 1—Affidavit of E. B. Padrick (Tariffs).

(18) Plaintiffs' Exhibit No. 2—Affidavit of E. B. Padrick in respect to letters by him to Interstate Commerce Commission and Illinois Commerce Commission.

600 (19) Plaintiffs' Exhibit No. 3—certified copy of proposed ordinance of City of Chicago.

(20) Plaintiffs' Exhibit No. 4—certified copy of proceedings of Chicago City Council Committee on Local Transportation.

(21) Plaintiffs' Exhibit No. 5—certified copy of Minutes of Committee on Local Transportation of July 21, 1955.

(22) Plaintiffs' Exhibit No. 6—certified copy of minutes of Committee on Local Transportation of July 26, 1955.

(23) Plaintiffs' Exhibit No. 7—Affidavit of Edwin A. Wahlen.

(24) Memorandum Entered by the Court on December 12, 1955.

(25) Notice and proposed judgment order presented to the Court on December 15, 1955, by Counsel for Defendants City of Chicago, et al.

(26) Order entered on December 15, 1955, Granting Leave to File Objections to Proposed Judgment Order, and Continuing Hearing to January 16, 1956.

(27) Notice served by Counsel for Defendants City of Chicago, et al., on December 20, 1955, of their proposal to withdraw the draft order presented on December 15, 1955, and substitute the judgment order attached to such notice.

(28) Plaintiffs' exceptions to defendants' proposed order of summary declaratory judgment.

(29) Conclusions of law to be substituted in the "Order of Summary Declaratory Judgment" submitted by the City of Chicago, served by Parmelee Transportation Company on January 5, 1956.

(30) Plaintiffs' exceptions to Intervenor's Suggested proposed order of summary declaratory judgment, with plaintiffs' Exhibits 8 and 9 attached.

601 (31) Supplemental memorandum entered by the Court on January 12, 1956.

(32) Findings of Fact and Conclusions of Law entered by the Court on January 12, 1956.

(33) Judgment order entered by the Court on January 12, 1956.

(34) Notice of Appeal, filed January 13, 1956.

(35) Motion for injunction during pendency of appeal.

(36) Order for injunction during pendency of appeal, entered January 13, 1956.

(37) Supersedeas bond for injunction during pendency of appeal.

(38) The Court Reporter's transcript of proceedings on October 24 and 28, and on November 10 and 17, and on December 15, 1955, and on January 13, 1956; and any other transcripts of hearings not specified herein.

(39) All orders and memoranda entered by the Court not described above.

(40) This designation of the record on appeal.

Benjamin F. Goldstein,
209 South La Salle Street,
Chicago 4, Illinois,
CE ntral 6-7577,

Amos M. Mathews,
Rm. 280 Union Station Bldg.,
Chicago 6, Illinois,
RA ndolph 6-6900,

Albert J. Meserow,
231 South La Salle Street,
Chicago 4, Illinois,
ST ate 2-8500,

*Attorneys for Plaintiffs-
Appellants.*

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Certificate of Service.

I hereby certify that on January 19, 1956, I served the foregoing designation of contents of record on appeal upon the following named counsel for all of the appellees by mailing copies thereof to them by first class United States mail postage prepaid at Chicago, Illinois:

To: Joseph F. Grossman,
Special Assistant Corporation Counsel,
City of Chicago,
City Hall, Chicago, Illinois,
Attorney for Defendants-Appellees.

Lee A. Freeman,
105 S. La Salle Street,
Chicago, Illinois,
Attorney for Defendant-Intervenor-
Appellee.

Amos M. Mathews,
280 Union Station Building,
Chicago 6, Illinois,
Attorney for Plaintiffs-
Appellants.

(Seal) /s/ Roy H. Johnson,
By Beverly V. Peters, Clerk,
Deputy Clerk.

(p. 170 is blank)

[fol. 171] IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

§§28-1

EXHIBIT B

*CHAPTER 28

PUBLIC PASSENGER VEHICLES

- | | |
|--|--|
| 28- 1. Definitions | 28-18. Notice |
| 28- 2. License required | 28-19. Livery vehicles |
| 28- 3. Interurban operations | 28-19.1. Taximeter prohibited |
| 28- 4. Inspections | 28-19.2. Solicitation of passengers prohibited |
| 28- 4.1. Specifications | 28-20. Livery advertising |
| 28- 5. Application | 28-21. Sightseeing vehicles |
| 28- 6. Investigation and issuance of license | 28-22. Taxicabs |
| 28- 7. License fees | 28-22.1. Public convenience and necessity |
| 28- 8. Renewal of licenses | 28-23. Identification of taxicab and cabman |
| 28- 9. Personal license—fair employment practice | 28-24. Taximeters |
| 28-10. Emblem | 28-25. Taximeter inspection |
| 28-11. License card | 28-26. Tampering with meters |
| 28-12. Insurance | 28-27. Taximeter inspection fee |
| 28-13. Payment of judgments and awards | 28-28. Taxicab service |
| 28-14. Suspension of license | 28-29. Group riding |
| 28-15. Revocation of license | 28-29.1. Front seat passenger |
| 28-16. Interference with commissioner's duties | 28-30. Taxicab fares |
| 28-17. Front seat passenger | 28-31. Terminal vehicle |
| | 28-32. Penalty |

Definitions

28-1. As used in this chapter:

“Busman” means a person engaged in business as proprietor of one or more sightseeing buses.

“Cabman” means a person engaged in business as proprietor of one or more taxicabs or livery vehicles.

“Chauffeur” means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

“City” means the city of Chicago.

* For amendments to former Chapter 28 prior to its revision on 12-20-51, see footnote at end of this chapter.

"Coachman" means a person engaged in business as proprietor of one or more terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

[fol. 172]

PUBLIC PASSENGER VEHICLES

§§ 28-2 to 28-6

"Terminal vehicle" means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers from terminal stations. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

License required

28-2. It is unlawful for any person other than a metropolitan transit authority or public utility to operate any vehicle, or for any such person who is the owner of any vehicle to permit it to be operated, on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

It is unlawful for any person to hold himself out to the public by advertisement or otherwise as a busman, cabman or coachman or as one who provides or furnishes any kind of public passenger vehicle service unless he has one or more public passenger vehicles licensed for the class of service offered; provided that any association or corporation which furnishes call service for transportation may advertise the class of service which may be rendered to its members or subscribers, as provided in this chapter, if it assumes the liability and furnishes the insurance as required by section 28-23. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Interurban operations

28-3. Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While such vehicle is in the city no person shall solicit passengers therefor and no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire. A white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed on the windshield of the vehicle. Any person in control or possession of such vehicle who violates the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Inspections

28-4. No vehicle shall be licensed as a public passenger vehicle until it has been inspected under the direction of

the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Specifications

28-4.1. No vehicle shall be licensed as a livery vehicle or taxicab unless it has two doors on each side, and no vehicle having seating capacity for more than seven passengers shall be licensed as a public passenger vehicle unless it has at least three doors on each side or fixed aisle space for passage to doors. [Passed. Coun. J. 12-30-52, p. 3905.]

Application

28-5. Application for public passenger vehicle licenses shall be made in writing signed and sworn to by the applicant upon forms provided by the commissioner. The application shall contain the full name and Chicago street address of the applicant, the manufacturer's name, model, length of time in use, horse power and seating capacity of the vehicle applicant will use if a license is issued, and the class of public passenger vehicle license requested. The commissioner shall cause each application to be stamped with the time and date of its receipt. The applicant shall submit a statement of his assets and liabilities with his application. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Investigation and issuance of license

28-6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be

rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the com-

[fol. 173]

§§ 28-7 to 28-10

MUNICIPAL CODE OF CHICAGO

missioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. [Passed. Coun. J. 12-20-51, p. 1596; amend. 4-16-52, p. 2178.]

License fees

28-7. The annual fee for each public passenger vehicle license of the class herein set forth is as follows:

Livery vehicle	\$ 25.00
Sightseeing vehicle	125.00
Taxicab	40.00
Terminal vehicle	25.00

Said fee shall be paid in advance when the license is issued and shall be applied to the cost of issuing such license, including, without being limited to, the investigations, inspections and supervision necessary therefor, and to the cost of regulating all operations of public passenger vehicles as provided in this chapter.

Nothing in this section shall affect the right of the city to impose or collect a vehicle tax and any occupational tax, as authorized by the laws of the state of Illinois, in addition to the license fee herein provided. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Renewal of licenses

28-8. All licenses for public passenger vehicles issued for the year 1951, which have not been revoked or surrendered prior to the time when such licenses for the year 1952 shall have been issued, may be renewed from year to year,

subject to the provisions of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

*Personal license—fair
employment practice*

28-9: No public passenger vehicle license shall be subject to voluntary assignment or transfer by operation of law, except in the event of the licensee's induction or recall into the armed forces of the United States for active duty or in the event of the licensee's death. In case of death the assignment shall be made by the legal representatives of his estate. No assignment shall be effective until the assignee shall have filed application for a license and is found to be qualified as provided in sections 28-5 and 28-6. If qualified the license shall be transferred to him by the commissioner, subject to payment of a transfer fee of \$50.00, the assumption by the assignee of all liabilities for loss or damage resulting from any occurrence arising out of or caused by the operation or use of the licensed public passenger vehicle before the effective date of the transfer and the approval by the commissioner of the insurance to be furnished by the busman, cabman or coachman as required by section 28-12.

It is unlawful for any busman, cabman or coachman to lease or loan a licensed public passenger vehicle for operation by any person for transportation of passengers for hire within the city. No person other than a chauffeur, who is either the busman, cabman or coachman or one hired by the busman, cabman or coachman to drive such vehicle as his agent or employee, in the manner prescribed by the busman, cabman or coachman, shall operate such vehicle for the transportation of passengers for hire within the city.

There shall be no discrimination by any busman, cabman or coachman against any person employed or seeking employment as a chauffeur with respect to hire, promotion, tenure, terms, conditions and privileges of employment on account of race, color, religion, national origin or ancestry. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Emblem

28-10. The commissioner shall deliver with each license a sticker license emblem which shall bear the words "Public Vehicle License" and "Chicago" and the numerals designating the year for which such license is issued, a reproduction of the corporate seal of the city, the names of the mayor and the commissioner and serial number identical with the number of the public vehicle license. The predominant back-ground colors of such sticker license emblems shall be different from the vehicle tax emblem for the same year and shall be changed annually. The busman, cabman or coachman shall affix, or cause to be affixed, said sticker emblem on the inside of the glass part of the windshield of said vehicle: [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

[fol. 174]

PUBLIC PASSENGER VEHICLES

§§ 28-11 to 28-13

License card

28-11. In addition to the license and sticker emblem the commissioner shall deliver a license card for each vehicle. Said card shall contain the name of the busman, cabman or coachman, the license number of the vehicle and the date of inspection thereof. It shall be signed by the commissioner and shall contain blank spaces upon which entries of the date of every inspection of the vehicle and such other entries as may be required shall be made. It shall be of different color each year. A suitable frame with glass cover shall be provided and affixed on the inside of the vehicle in a conspicuous place and in such manner as may be determined by the commissioner for insertion and removal of the public passenger vehicle license card; and in every livery vehicle and taxicab said frame shall also be provided for insertion and removal of the chauffeur's license card and such other notice as may be required by the provisions of this chapter and the rules of the commissioner. It is unlawful to carry any passenger or his baggage unless the license cards are exposed in the frame as provided in this section. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Insurance

28-12. Every busman, cabman or coachman shall carry public liability and property damage insurance and workmen's compensation insurance for his employees with solvent and responsible insurers approved by the commissioner, authorized to transact such insurance business in the state of Illinois, and qualified to assume the risk for the amounts hereinafter set forth under the laws of Illinois, to secure payment of any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the busman's, cabman's or coachman's public passenger vehicles.

The public liability insurance policy or contract may cover one or more public passenger vehicles, but each vehicle shall be insured for the sum of at least five thousand dollars for property damage and fifty thousand dollars for injuries to or death of any one person and each vehicle having seating capacity for not more than seven adult passengers shall be insured for the sum of at least one hundred thousand dollars for injuries to or death of more than one person in any one accident. Each vehicle having seating capacity for more than seven adult passengers shall be insured for injuries to or death of more than one person in any one accident for at least five thousand dollars more for each such additional passenger capacity. Every insurance policy or contract for such insurance shall provide for the payment and satisfaction of any final judgment rendered against the busman, cabman or coachman and person insured, or any person driving any insured vehicle, and that suit may be brought in any court of competent jurisdiction upon such policy or contract by any person having claims arising from the operation or use of such vehicle. It shall contain a description of each public passenger vehicle insured, manufacturer's name and number, the state license number and the public passenger vehicle license number.

In lieu of an insurance policy or contract a surety bond or bonds with a corporate surety or sureties authorized to do business under the laws of Illinois, may be accepted by the commissioner for all or any part of such insurance; provided that each bond shall be conditioned for the pay-

ment and satisfaction of any final judgment in conformity with the provisions of an insurance policy required by this section.

All insurance policies or contracts or surety bonds required by this section, or copies thereof certified by the insurers or sureties, shall be filed with the commissioner and no insurance or bond shall be subject to cancellation except on thirty days' previous notice to the commissioner. If any insurance or bond is cancelled or permitted to lapse for any reason, the commissioner shall suspend the license for the vehicle affected for a period not to exceed thirty days, to permit other insurance or bond to be supplied in compliance with the provisions of this section. If such other insurance or bond is not supplied, within the period of suspension of the license, the mayor shall revoke the license for such vehicle. [Passed, Coun. J. 12-20-51, 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Payment of judgments and awards

28-13. All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any public passenger vehicle shall be paid by the busman, cabman or coachman within ninety days after they shall become final and not stayed

[fol. 175]

§§ 28-14 to 28-19 . . . MUNICIPAL CODE OF CHICAGO

by supersedeas. This obligation is absolute and not contingent upon the collection of any indemnity from insurance. [Passed, Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Suspension of license

28-14. If any public passenger vehicle shall become unsafe for operation or if its body or seating facilities shall be so damaged, deteriorated or unclean as to render said vehicle unfit for public use, the license therefor shall be suspended by the commissioner until the vehicle shall be made safe for operation and its body shall be repaired and

painted and its seating facilities shall be reconditioned or replaced as directed by the commissioner. In determining whether any public passenger vehicle is unfit for public use the commissioner shall give consideration to its effect on the health, comfort and convenience of passengers and its public appearance on the streets of the city.

Upon suspension of a license for any cause, under the provisions of this chapter, the license sticker emblem shall be removed by the commissioner from the windshield of the vehicle and an entry of the suspension shall be made on the license card. If the suspension is terminated an entry thereof shall be made on the license card by the commissioner and a duplicate license sticker shall be furnished by the commissioner for a fee of one dollar. The commissioner shall notify the department of police of every suspension and termination of suspension. [Passed, Coun. J. 12-20-51, p. 1596.]

Revocation of license

28-15. If any summons or subpoena issued by a court or commission cannot be served upon the busman, cabman, or coachman at his last Chicago address recorded in the office of the commissioner within sixty days after such process is delivered to the person authorized to serve it, and the busman, cabman, or coachman fails to appear in answer to such process for want of service, or if any busman, cabman or coachman shall refuse or fail to pay any judgment or award as provided in section 28-13, or shall lease or loan any of his licensed public passenger vehicles for operation by any person for hire or shall be convicted of a felony or any criminal offense involving moral turpitude, the mayor shall revoke all public vehicle licenses held by him.

If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any public passenger vehicle is operated in violation of the provisions of this chapter for which revocation of the license is not mandatory, or if any public passenger vehicle is operated in violation of the rules and regulations of the commissioner relating to the ad-

ministration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that the public passenger vehicle license therefor be revoked and the mayor, in his discretion, may revoke said license.

Upon revocation of any license, the commissioner shall remove the license sticker emblem and the license card from the vehicle affected. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Interference with commissioner's duties

28-16. Every busman, cabman or coachman shall deliver or submit his public passenger vehicles for inspection or the performance of any other duty by the commissioner upon demand. It is unlawful for any person to interfere with or hinder or prevent the commissioner from discharging any duty in the enforcement of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Front seat passenger

28-17. It is unlawful to permit more than one passenger to occupy the front seat with the chauffeur in any public passenger vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

Notice

28-18. It is the duty of every busman, cabman or coachman to notify the commissioner whenever any change in his Chicago address is made. Any notice required to be given to the busman, cabman or coachman shall be sufficient if addressed to the last Chicago address recorded in the office of the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Livery vehicles

28-19. No person shall be qualified for a livery vehicle license and a taxicab license at the same time; nor shall any person having a livery vehicle license be associated with anyone for sending or receiving calls for taxicab service.

[fol. 176]

PUBLIC PASSENGER VEHICLES §§ 28-19.1 to 28-22.1

No license for any livery vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing, the commissioner shall determine that public convenience and necessity require additional livery service and shall recommend to the council the maximum number of such licenses to be authorized by ordinance.

Not more than six passengers shall be accepted for transportation in a livery vehicle on any trip. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Taximeter prohibited

28-19.1. It is unlawful for any person to operate or drive a livery vehicle equipped with a meter which registers a charge or fare or indicates the distance traveled by which the charge or fare to be paid by a passenger is measured. [Passed. Coun. J. 1-30-52, p. 1921.]

Solicitation of passengers prohibited

28-19.2. It is unlawful for any person to solicit passengers for transportation in a livery vehicle on any public way. No such vehicle shall be parked on any public way for a time longer than is reasonably necessary to accept passengers in answer to a call for service and no passengers shall be accepted for any trip in such vehicle without previous engagement for such trip, at a fixed charge or fare, through the station or office from which said vehicle is operated. [Passed. Coun. J. 1-30-52, p. 1921.]

Livery advertising

28-20. It is unlawful for the cabman of any livery vehicle, or the station from which it is operated to use the word "taxi", "taxicab" or "cab" in connection with or as part of the name of the cabman or his trade name.

The outside of the body of each livery vehicle shall be uniform black, blue or blue-black color. No light fixtures or lights shall be attached to or exposed so as to be visible

outside of any livery vehicle, except such as are required by the law of the state of Illinois regulating traffic by motor vehicles and one rear red light in addition to those required by said law. No name, number or advertisement of any kind, excepting official license emblems or plates, shall be painted or carried so as to be visible outside of any livery vehicle.

It is unlawful for any person to hold himself out to the public by advertisement, or otherwise, to render any livery service unless he is the cabman of a licensed livery vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

Sightseeing vehicles

28-21. Sightseeing vehicles shall not be used for transportation of passengers for hire except on sightseeing tours or chartered trips. Passengers for sightseeing tours shall not be solicited upon any public way except at bus stands specially designated by the council for sightseeing vehicles.

It is unlawful for any cabman or coachman to advertise his public passenger vehicle for hire on sightseeing tours. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Taxicabs

28-22. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for service. If the service of any taxicab is discontinued for any reason except on account of strike, act of God or cause beyond the control of the cabman, the commissioner may give written notice to the cabman to restore the taxicab to service, and if it is not restored within five days after notice, the commissioner may recommend to the mayor that the taxicab license be revoked and the mayor, in his discretion, may revoke same. [Passed. Coun. J. 12-20-51, p. 1596.]

Public convenience and necessity

28-22.1. Not more than 3761 taxicab licenses shall be issued unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional taxicab service and shall recommend

the number of taxicab licenses which may be issued. Notice of such hearing stating the time and place thereof shall be published in the official newspaper of the city at least twenty days prior to the hearing and by mailing a copy thereof to all taxicab licensees. At such hearing any licensee, in person or by attorney, shall have the right to cross-examine witnesses and to introduce evidence pertinent to the subject. At any time and place fixed for such hearing it may be adjourned to another time and place without further notice.

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§§ 28-23 to 28-25

MUNICIPAL CODE OF CHICAGO

In determining whether public convenience and necessity require additional taxicab service, due consideration shall be given to the following:

1. The public demand for taxicab service;
2. The effect of an increase in the number of taxicabs on the safety of existing vehicular and pedestrian traffic;
3. The effect of increased competition,
 - (a) on revenues of taxicab licensees;
 - (b) on cost of rendering taxicab service, including provisions for proper reserves and a fair return on investment in property devoted to such service;
 - (c) on the wages or compensation, hours and conditions of service of taxicab chauffeurs;
4. The effect of a reduction, if any, in the level of net revenues to taxicab licensees on reasonable rates of fare for taxicab service;
5. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional taxicab service, the council, by ordinance, may fix the maximum number of taxicab licenses to be issued, not to exceed the number recom-

mended by the commissioner. [Passed. Coun. J. 1-30-52, p. 1921.]

Identification of taxicab and cabman

28-23. Every taxicab shall have the cabman's name, telephone number and the public passenger vehicle license number plainly painted in plain Gothic letters and figures of three-eighth inch stroke and at least two inches in height in the center of the main panel of the rear doors of said vehicle. In lieu of the cabman's telephone number the name and telephone number of any corporation or association with which the cabman is affiliated may be painted in the same manner, provided such corporation or association shall have assumed equal liability with the cabman for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the cabman's taxicabs and shall carry and furnish to the commissioner public liability and property damage insurance to secure payment of such loss or damage as provided in section 28-12. The public vehicle license number assigned to any taxicab shall be assigned to the same vehicle or to any vehicle substituted therefor upon annual renewal of the license. No other name, number or advertisement of any kind, excepting signs required by this chapter, official license emblems or plates and a trade emblem, in a manner approved by the commissioner, shall be painted or carried so as to be visible on the outside of any taxicab. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Taximeters

28-24. Every taxicab shall be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached. The taximeter shall be equipped with a flag at least three inches by two inches in size. The flag shall be plainly visible from the street and shall be kept up when the taxicab is for hire and shall be kept down when it is engaged.

Taximeters shall have a dial or dials to register the tariff in accordance with the lawful rates and charges. The dial shall be in plain view of the passenger while riding and

between sunset and sunrise the dial shall be lighted to enable the passenger to read it.

It is unlawful to operate a taxicab for hire within the city unless the taximeter attached thereto has been sealed by the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, 1921.]

Taximeter inspection.

28-25. At the time a taxicab license is issued and semi-annually thereafter the taximeter shall be inspected and tested by the commissioner to determine if it complies with the specifications of this chapter and accurately registers the lawful rates and charges. If it is in proper condition for use, the taximeter shall be sealed and a written certificate of inspection shall be issued by the commissioner to the cabman. Upon complaint by any person that a taximeter is out of working order or does not accurately register the lawful rates and charges it shall be again inspected and tested and, if found to be in improper working condition or inaccurate, it shall be unlawful to operate the taxicab to which it is attached until it is equipped with a taximeter which has been inspected and tested by the commissioner, found to be in proper condition, sealed and a written certificate of inspection therefor is issued.

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PUBLIC PASSENGER VEHICLES

§§ 28-26 to 28-30

The cabman or person in control or possession of any taxicab shall deliver it with the taximeter attached or deliver the taximeter detached from the taxicab for inspection and test as requested by the commissioner. The cabman may be present or represented when such inspection and test is made. [Passed. Coun. J. 12-20-51, p. 1596.]

Tampering with meters.

28-26. It is unlawful for any person to tamper with, mutilate or break any taximeter or the seal thereof or to transfer a taximeter from one taxicab to another for use in transportation of passengers for hire before delivery of the taxicab with a transferred taximeter for inspection test

and certification by the commissioner as provided in section 28-25. [Passed. Coun. J. 12-20-51, p. 1596.]

Taximeter inspection fee

28-27. The fee for each certificate of inspection shall be three dollars, but no charge shall be made for any certificate when the inspection and test is made upon complaint, and it is found that the taximeter is in proper working condition and accurately registers the lawful rates and charges. [Passed. Coun. J. 12-20-51, p. 1596.]

Taxicab service

28-28. It is unlawful to refuse any person transportation to any place within the city in any taxicab which is unoccupied by a passenger for hire unless it is on its way to pick up a passenger in answer to a call for service or it is out of service for any other reason. When any taxicab is answering a call for service or is otherwise out of service it shall not be parked at a cabstand, and no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire. A white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed on the windshield of such taxicab. [Passed. Coun. J. 12-20-51, p. 1596.]

Group riding

28-29. Group riding is prohibited in taxicabs, except as directed by the passenger first engaging the taxicab. Not more than five passengers shall be accepted for transportation on any trip; provided that additional passengers under twelve years of age accompanied by an adult passenger shall be accepted if the taxicab has seating capacity for them. [Passed. Coun. J. 12-20-51, p. 1596.]

Front seat passenger

28-29.1. No passenger shall be permitted to ride on the front seat with the chauffeur of the taxicab unless all other seats are occupied. [Passed. Coun. J. 12-20-51, p. 1596.]

Taxicab fares.

28-30. Rates of fare for taxicabs shall be as follows:

For the first one-quarter of a mile or fraction thereof for one person	25 cents
For each additional one-half of a mile or fraction thereof for one person	10 cents
For each additional person of twelve years or more for the whole trip	10 cents
For each three minutes of waiting, time or fraction thereof	10 cents

Waiting time shall include the time beginning three minutes after call time at the place to which the taxicab has been called when it is not in motion, the time consumed by unavoidable delays at street intersections, bridges or elsewhere and the time consumed while standing at the direction of a passenger.

Every passenger under twelve years of age when accompanied by an adult shall be carried without charge.

Ordinary hand baggage of passengers shall be carried without charge. A fee of twenty-five cents may be charged for carrying a trunk, but no trunk shall be carried except inside of the taxicab.

Immediately on arrival at the passenger's destination it shall be the duty of the chauffeur to throw the taximeter lever to the non-recording position and to call the passenger's attention to the fare registered.

It is unlawful for any person to demand or collect any fare for taxicab service, which is more or less than the rates established by the foregoing schedule, or for any passenger to refuse payment of the fare so registered. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

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§§ 28-31 to 28-32

MUNICIPAL CODE OF CHICAGO

Terminal vehicle

28-31. No person shall be qualified for a terminal vehicle license unless he has a contract with one or more railroad

or steamship companies for the transportation of their passengers from terminal stations.

It is unlawful to operate a terminal vehicle for the transportation of passengers for hire except for their transfer from terminal stations to destinations in the area bounded on the north by E. and W. Ohio street; on the west by N. and S. Desplaines street; on the south by E. and W. Roosevelt road; and on the east by Lake Michigan. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Penalty

28-32. Any person violating any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than \$5.00 nor more than \$100.00 for the first offense, not less than \$25.00 nor more than \$100.00 for the second offense during the same calendar year, and not less than \$50.00 nor more than \$100.00 for the third and succeeding offenses during the same calendar year, and each day that such violation shall continue shall be deemed a separate and distinct offense. [Passed. Coun. J. 12-20-51, p. 1596.]

NOTE: The following list covers amendments prior to 12-20-51 to former sections 28-1 to 28-22, revised 12-28-45, p. 4689:

- 28-4. 2-6-48, p. 1918; 3-1-48, p. 1983.
 - 28-8. 2-28-46, p. 5167; 2-5-47, p. 7249; 2-6-48, p. 1918.
 - 28-18. 2-28-46, p. 5167; 2-5-47, p. 7249; 2-6-48, p. 1918.
 - 28-19. 2-6-48, p. 1918; 3-1-48, p. 1983; 12-29-50, p. 7622.
 - 28-29. 9-29-48, p. 2978.
 - 28-35. 8-21-41, p. 5457; 10-27-43, p. 803; 12-28-44, p. 2626.
 - 28-36. 10-27-43, p. 803.
 - 28-38. 8-21-41, p. 5457.
-

[fol. 180] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 181]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Civil Action #55 C 1883 — Equitable Relief Demanded

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
et al., Plaintiffs

v.

CITY OF CHICAGO, a Municipal Corporation, et al.,
Defendants

AFFIDAVIT—Filed November 10, 1955.

Charles E. Rheintgen, being first duly sworn on oath deposes and says that he is Vice President of the Parmelee Transportation Company and as such is authorized to execute this Affidavit on its behalf.

That the attached Local and Joint Passenger Tariff T No. 3 effective July 1, 1954 and Supplement No. 2 thereto effective October 1, 1955 are true and correct copies of charges, rules and regulations governing the transfer of passenger and baggage at junction points shown as issued by agents for the railroads covered thereunder.

Further affiant sayeth not.

Charles E. Rheintgen

Subscribed and sworn to before me this 10 day of November, 1955, Lilyan Fisher, Notary Public.

(SEAL)

[fol. 182]

I.C.C. No. 302

GTRy-C. T. C. No. W-1418

L&PSRy-C. T. C. No. 1059

NYCRR-C. T. C. No. 2664

(See Cancellation Notice, Page 2)

Ill. C. C. No. 76

I. R. C. No. 75

K. R. C. No. 58

M. P. S. C. No. 79

N. C. U. C. No. 44

P. S. C.-N. Y. No. 103

Ohio No. 91

(See Cancellation Notice, Page 2)

P. S. C.-Md. No. 71

P. U. C.-N. J. No. 78

Pa. P. U. C. No. 108

V. C. C. No. P-83

P. S. C.-W. Va. No. 88

(See Cancellation Notice, Page 2)

Only one supplement to this tariff
may be in effect at any time

TRUNK LINE—CENTRAL PASSENGER TARIFF BUREAU

LOCAL AND JOINT PASSENGER TARIFF

T NO. 3

(Cancelling Tariff T No. 2)

OF

CHARGES, RULES AND REGULATIONS

GOVERNING THE

TRANSFER OF PASSENGER AND BAGGAGE AT JUNCTION POINTS SHOWN HEREIN

FOR USE IN CONNECTION WITH

TARIFFS PUBLISHING ONE-WAY AND ROUND-TRIP FARES IN
WHICH SPECIFIC REFERENCE IS MADE AUTHORIZING THE USE
OF THIS TARIFF TO DETERMINE TRANSFER ARRANGEMENTS,
EXCEPT AS FURTHER PROVIDED IN SECTION 3

Issued May 26, 1954

Effective July 1, 1954

ISSUING AND INITIAL CARRIERS—See pages 2 and 3

Acting under Powers of At-
torney lawfully on file as indi-
cated on pages 2 and 3.

Issued by

V. ARMOLD, Agent,

One Park Ave., New York 16, N. Y.

[fol. 183]

SECTION 1.

SECTION 1

RULE 1. (a) ISSUING AND INITIAL CARRIERS.

This tariff is published by V. Arnold, Agent, for and on behalf of the following lines under Powers of Attorney as shown below and as filed with the Interstate Commerce Commission, and the several State Commissions indicated below.

ISSUING AND INITIAL CARRIERS

The Baltimore and Ohio Railroad Company

The Central Railroad Company of New Jersey

The Chesapeake and Ohio Railway Company

Chicago, Indianapolis and Louisville Railway Company

Delaware and Hudson Railroad Corporation

The Delaware, Lackawanna and Western Railroad Company

Erie Railroad Company

ØGrand Trunk Railway System

Lehigh Valley Railroad Company

Long Island Rail Road Company (Wm. Wyer, Trustee)

The New York Central Railroad Company

The New York, Chicago and St. Louis Railroad Company

Norfolk and Western Railway Company

The Pennsylvania Railroad Company

Pennsylvania-Reading Seashore Lines

The Pittsburgh and Lake Erie Railroad Company

Reading Company

Wabash Railroad Company

ØComprising the following carriers:

Canadian National Railway Company.

The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee).

The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee).

Grand Trunk Western Railroad Company.

[fol. 184]

RULES AND REGULATIONS

RULE 3. APPLICATION OF TARIFF.

(a) This tariff is to be used only in connection with passenger tariffs authorizing fares for and on behalf of the issuing and initial carriers of this tariff, and in which specific reference is made hereto, except as provided in paragraph (c) below.

(b) The transfer arrangements published herein will apply from all stations authorized in paragraph (a) above, on the lines of the issuing and initial carriers in connection with tickets reading via or baggage checked via the junction points named herein.

Junction points are shown alphabetically in Section 2.

(c) Transfer charges to be used in constructing fares from points of origin, to destinations, or via routes not shown in tariffs authorizing through fares, are shown in Section 3. See Rule 5, Section 1.

(d) The letter designation shown after each railroad in Column 2, Section 2, indicates whether or not there are different stations at such junction points. Where the same letter designation is shown for two or more railroads at a junction point, it indicates that such lines use the same station and no transfer is necessary.

RULE 4. PASSENGER TRANSFERS.

Through Transportation

(a) Where it is designated in Column 4, Section 2, that passenger transfer is included, transfer coupon must be included in through ticket without additional collection.

(b) Where it is designated in Column 4, Section 2, that there are no arrangements for passenger transfer, transfer coupon must not be included in through ticket and passengers will be required to make their own arrangements.

Combination Transportation

(c) There are no arrangements for transfer of passengers holding "combination transportation" (combination of

tickets or passes, or of tickets and passes), and in such case passengers must make arrangements for their own personal transfer, except as provided in Section 2, at Chicago, Ill., Detroit, Mich., Kalamazoo, Mich., Louisville, Ky., and Toledo, Ohio, and other junction points shown in Section 3.

RULE 6. BAGGAGE TRANSFERS.

Through Transportation

(a) Where it is designated in Column 5, Section 2, that baggage transfer is included, baggage may be checked through without additional collection.

Note—Where it is designated in Column 5, Section 2, that baggage transfer is included, and charges are shown opposite such statement in Column 6, the charges shown in Column 6 will apply in connection with combination transportation only.

(b) Where it is designated in Column 5, Section 2, that baggage transfer is not included, and charges are shown opposite such statement in Column 6; baggage may be checked through such junction point by use of proper transfer tag upon collection of charges shown in Column 6.

(c) Where it is designated in Column 5, Section 2, that no transfer arrangements are available, baggage must be checked only to the junction point.

Combination Transportation

(d) There are no arrangements for the free checking of baggage on "combination transportation" (combination of tickets or passes, or of tickets and passes), and in such case baggage may be checked through by the use of proper transfer tag upon collection of the amount shown in Column 6, Section 2 (except where otherwise specifically indicated).

Note—The amounts shown in Column 6, Section 2 (except where otherwise specifically indicated), must always be collected where combination transportation is used.

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SECTION 2.

PASSENGER AND BAGGAGE TRANSFER ARRANGEMENTS
AT
JUNCTION POINTS NAMED BELOW

SECTION 3

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
JUNCTION POINT	Road and Designation	Transfer Required Between Depots	Passenger Transfer	Baggage Transfer	Baggage Transfer Charges (Per Piece) apply as provided in Rule 6, Section 1, except as otherwise indicated below
					Trunk: Hand Baggage
Chicago Ill. Central Station	(IllCent. A NYC(†) A AT&SF B C&EI B CI&L B ErieRR B GT B Wab B		Passenger transfer included	Transfer of all baggage included	
Dearborn Station	(B&O C CGW C SooLine C C&O(PMD) C CRI&P D NYC(+) D NickelPlate D	Between all railroad stations when transfer is necessary			
Grand Central Station	(CB&Q E CMStP&P. E GM&O E PRR E				
La Salle Street Station	(C&NWSsystem F				
Union Station	CNS&M G				
Northwestern Station	CSS&SB H				
CNS&M Station					
CSS&SB Station					

Note 1—When combination transportation is presented, collection of \$1.20 must be made to cover transfer of passenger and all baggage, except as otherwise provided below.

Exception

(Applies Westbound or Eastbound)

Transfer ticket (including transfer of passenger and all baggage) may be issued **without charge** to holders of combination transportation (not passes), as follows:

(a) One way transfer—When passenger holds a ticket to Chicago, also a ticket from Chicago to destination to which the one way fare from Chicago is \$2.98 or more for first class ticket or \$2.12 or more for coach ticket.

(b) Round trip transfer—When passenger holds a round trip ticket to Chicago from a point from which the one way fare to Chicago is \$2.98 or more for first class ticket or \$2.12 for coach ticket, and also holds a round trip ticket from Chicago to a destination to which the one way fare from Chicago is \$2.98 or more for first class ticket or \$2.12 or more for coach ticket.

★Note 2

For ErieRR—Hand baggage will be transferred without additional charge from Dearborn Station to connecting line station in Chicago, for passengers who hold through transportation including transfer coupon, to any point beyond Chicago. Hand baggage of passengers en route to destinations on the AT&SF, C&M, CI&L, GT or Wab will be transferred to the parcel room at Dearborn Station. In consideration of this service the Erie Railroad Company shall be deemed to be a gratuitous bailee, and in any event its liability for each article so handled shall not exceed the amount of \$25.00.

†Chicago-Indianapolis and Chicago-Niles Lines.

‡Chicago-Danville and Chicago-South Bend Lines. Also Trains Nos. 8 and 17 on Chicago-Niles Lines.

★Change effected by this supplement.

③Applies only when baggage is checked as provided for in Rules 5 and 6 (d), Section 1.

①Reissue: Effective October 1, 1954, in Supplement No. 1.

[fol. 186] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 187] IN THE UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

No. 11692 SEPTEMBER TERM, 1956, SEPTEMBER SESSION, 1956.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY, et al., Plaintiffs-Appellants,

v.

CITY OF CHICAGO, a municipal corporation, et al.,
Defendants-Appellees,

and

PARMELEE TRANSPORTATION COMPANY, Defendant-
Intervenor-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Before Major, Swain and Schnackenberg, Circuit
Judges.

OPINION—January 17, 1957

Schnackenberg, Circuit Judge. Twenty-one railroads,
herein sometimes referred to as Terminal Lines, and Rail-

The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago & Eastern Illinois Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Milwaukee, St. Paul & Pacific Railroad Company; Chicago North Shore and Milwaukee Railway; Chicago and North Western Railway Company; Chicago, Rock Island & Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; and the Wabash Railroad Company.

road Transfer Service, Inc., sometimes herein referred to as Transfer, on October 24, 1955 brought an action in the [fol. 188] district court against defendant City of Chicago, sometimes herein referred to as the city, and certain officials thereof.² Plaintiffs' complaint seeks a declaratory judgment and injunctive relief against the enforcement against them of an ordinance known as chapter 23 of the municipal code of Chicago, as amended by an ordinance enacted July 26, 1955. Plaintiffs asked the district court to declare by its judgment, *inter alia*, that the ordinance, as amended in 1955, is void as applied to them.

Parmelee Transportation Company, sometimes herein referred to as Parmelee, on its petition was granted leave to intervene as a defendant.³

On motion of defendants, other than Parmelee, pursuant to rule 56 of the federal rules of civil procedure,⁴ and on the pleadings, affidavits and exhibits submitted by all parties, the district court on January 12, 1956 granted a summary judgment against plaintiffs and dismissed their action.⁵ 136 F. Supp. 476. From said judgment this appeal was taken.⁶

The undisputed facts we now set forth.

There are eight passenger terminals in downtown Chicago, each being used by from one to six railroads. No one railroad passes through Chicago, but about 3900 railroad passengers daily travel through Chicago on continuous journeys which begin and end at points outside Chicago. At Chicago, they transfer from an incoming, to an outgoing, railroad. The only practical method of transferring

² Richard J. Daley, as mayor; John C. Melaniphy, as acting corporation counsel; Timothy P. O'Connor, as commissioner of police; and William P. Flynn, as public license commissioner.

³ The district court considered the petition as an answer to the complaint.

⁴ Fed. Rules of Civil Procedure, rule 56, 28 U.S.C.A.

⁵ On the same day the district court filed "findings of fact" and "conclusions of law", one conclusion being that there is no genuine issue of fact involved in this controversy.

⁶ On January 13, 1956 the district court ordered that defendants, other than Parmelee, be enjoined from enforcing the ordinance in question against plaintiffs upon the latter filing supersedeas bond of \$50,000. It is our understanding that this bond was filed.

these passengers between the different terminal stations is by motor vehicle equipped to carry them and their hand baggage simultaneously. More than 99 per cent of the passengers so transferred between terminal stations are [fol. 189] traveling on through tickets between points of origin and destination located in different states. They are carried over public ways of the city.

Transfer began its operations on October 1, 1955, but has not applied to the city for public passenger terminal vehicle licenses. These transfer operations are required by a tariff filed with the Interstate Commerce Commission.⁷ They have been provided for by tariffs for more than the past forty years.

Pursuant to such tariffs a passenger traveling through Chicago purchases at his point of origin a railroad ticket composed of a series of coupons covering his complete transportation to his destination. If his through journey requires him to transfer from one railroad passenger terminal in Chicago to another, a part of his ticket consists of a coupon good for the transfer of himself and his hand baggage between such terminals. The expense of the required transfer service is absorbed by the railroads.

⁷ Local and Joint Passenger Tariff No. 3 governing, *inter alia*, passengers and baggage transfer between stations in Chicago, was filed with the Interstate Commerce Commission on behalf of Terminal Lines. On page 11 of said tariff, in Section 2 thereof, the Terminal Lines are listed according to the Chicago stations which they enter and it is set forth in Section 2 thereof that transfer is required between all railroad stations when transfer is necessary, and in Column 4 appears "Passenger transfer included", while in Column 5 there appears "Transfer of all baggage included".

Page 5 of said tariff in Section 1 thereof provides in rule 4, in part, as follows:

"Through Transportation. (a) Where it is designated in Column 4, Section 2, that passenger transfer is included, transfer coupon must be included in through ticket without additional collection."

And rule 6 in Section 1, in part, provides:

"Through Transportation. (a) Where it is designated in Column 5, Section 2, that baggage transfer is included, baggage may be checked through without additional collection."

The tariffs provide that any such required transfer service shall be without additional charge where a one-way fare from Chicago to destination would be more than a specified minimum sum. Where such fare would be less than such minimum, a fixed charge which varies with the fare must be added to cover the required transfer service.

Prior to October 1, 1955, there had existed for many years arrangements between the Terminal Lines and Parmelee whereby it furnished this service for coupon-holding passengers. On June 13, 1955, the Terminal Lines ended [fol. 190] their arrangement with Parmelee effective September 30, 1955. Under date of October 1, 1955, the Terminal Lines and Transfer executed a contract. In brief, this contract⁸ provides that, upon delivery of a transfer coupon to Transfer by a through-passenger, it will carry him and his hand baggage from the incoming to the appropriate outgoing station without charge. Transfer is compensated by the outgoing terminal railroad. Transfer is given the exclusive right to perform this transfer service. Transfer devotes its vehicles exclusively to service under the contract.⁹

On and prior to June 13, 1955, there was in effect an ordinance of the city, being said chapter 28 of the municipal code, consisting of sections 28-1 to 28-32,¹⁰ for the regulation of "Public Passenger Vehicles." Section 28-1 contained the following definitions, *inter alia*:

"'Public passenger vehicle' means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan

⁸ On or about September 19, 1955, the railroads filed copies of the contract with the Interstate Commerce Commission and with the Illinois Commerce Commission.

⁹ The contract also provides that Transfer shall perform certain additional baggage transfer services for Terminal Lines. The transfer of a passenger's *checked* baggage by Transfer in vehicles other than "terminal vehicles", although covered by terms of the contract between Terminal Lines and Transfer, as well as actually performed by Parmelee prior to October 1, 1955, is not involved in this case.

¹⁰ Herein sometimes referred to as the prior ordinance.

transit authority or public utility under the laws of Illinois."

* * * * *

"Terminal vehicle' means a public passenger vehicle which is operated under contracts with railroad and steamship companies, exclusively for the transfer of passengers from terminal stations."

Section 28-31 provided:

"28-31. No person shall be qualified for a terminal vehicle license unless he has a contract with one or more railroad or steamship companies for the transportation of their passengers from terminal stations.

"It is unlawful to operate a terminal vehicle for the transportation of passengers for hire except for their transfer from terminal stations to destinations [fol. 191] in the area bounded on the north by E. and W. Ohio Street; on the west by N. and S. Desplaines Street; on the south by E. and W. Roosevelt Road; and on the east by Lake Michigan."

Certain other parts of chapter 28 incorporated regulations enacted pursuant to the police power of the city.¹¹

Parmelee was, on and prior to September 30, 1955, the only person having a transfer contract with the Terminal Lines and licensed to operate terminal vehicles under the ordinance.

At a meeting of the committee on local transportation of the Chicago city council held on July 21, 1955, the chairman stated that recently he had been advised by the Vehicle License Commissioner that he had received a communication from Parmelee advising that its contract with the

¹¹ These are provisions for granting and suspension of licenses, safety regulations based on the type of vehicle, number of passengers permitted, condition and maintenance of vehicles, inspection thereof, etc., financial responsibility of operators, investigation of character of prospective licensees and continuing supervision thereof, requirements for maintenance of adequate insurance, determination of public convenience and necessity with respect to number of certain intrastate vehicles, i.e. livery and taxicabs, which are to be permitted on the city streets, and regulation of taxi fares through meters.

railroads was to be canceled out in September of that year, "which would make it appear that the railroads were taking the position of dictating who would or could operate terminal vehicles in Chicago; that he did not think that was right and had prepared an ordinance with the assistance of Mr. Gross, and had it introduced in the city council and referred it to the committee; that subsequently he had discussed said ordinance with Mr. Grossman of the corporation counsel's office and that, as a result of his conference with Mr. Grossman, it would appear that, while he was on the right track in the matter, his method of approach was wrong."

Mr. Grossman informed the committee that he had looked over the ordinance "as introduced" by the chairman and was of the opinion that it was not in proper form; but that he believed the objective could be obtained in some other way. He said he would endeavor to prepare and submit an ordinance on this subject.

The chairman's proposed ordinance, which met with Mr. Grossman's objection as to form, and which was laid aside, [fol. 192] in brief would have granted an exclusive franchise for ten years to Parmelee for the operation of terminal vehicles to transfer passengers and their baggage between railroad stations.¹²

On July 26, 1955, the chairman stated that the committee was in session to receive a report from Mr. Grossman who had prepared a substitute ordinance which would accomplish what the committee had in mind, namely, placing the licensing and operation of terminal vehicles under the complete control of the city of Chicago, whereas, as

¹² § 2 read: "Subject to all the conditions of this ordinance, exclusive permission and authority is hereby granted to the licensee to operate terminal vehicles in the City for a period of ten (10) years, commencing on . . . , 1955, and ending on . . . , 1965."

§ 4 provided: "It is unlawful for any person to be an operator of one or more terminal vehicles on any public way from place to place within the corporate limits of the city unless such terminal vehicles are licensed by the City as terminal vehicles. * * *"

§ 11 provided: "Upon the effective date of this ordinance, the commissioner shall issue licenses hereunder to licensee in not to exceed the number of licenses held by such licensee on April 1, 1955. * * *"

the code then provided, the only one who could secure a license for the operation of a terminal vehicle was someone who had a contract with the railroads.

On recommendation of the committee, the council on the same day passed the ordinance now under attack.¹³

1. The city and Parmelee concede that Transfer is engaged in interstate commerce. In *United States v. Yellow Cab Co.*, 332 U.S. 218, 228, Parmelee's operation (including that part now being carried on by Transfer) was held to be an integral step in an interstate movement and, therefore, a constituent part of interstate commerce.¹⁴ The court pointed out that Chicago is the terminus of a large number of railroads engaged in interstate passenger traffic and that a great majority of the persons making interstate railroad trips which carry them through Chicago must disembark from a train at one railroad station, travel from that station to another some two blocks to two miles distant, and board another train at the latter station; that Parmelee had contracted with the railroads to provide this transportation by special cabs carrying seven to ten passengers. The court said that Parmelee's contracts were exclusive in nature, adding:

[fol. 193] "The transportation of such passengers and their luggage between stations in Chicago is clearly a part of the stream of interstate commerce. When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. *The Daniel Ball*, 10 Wall. 557, 565. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. See *Stafford v. Wallace*, 258 U.S. 495.

¹³ Herein sometimes referred to as the 1955 ordinance.

¹⁴ The destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce, whether interstate or not. *Sprout v. South Bend*, 277 U.S. 163, 168.

"Any attempt to monopolize or to impose an undue restraint on such a constituent part of interstate commerce brings the Sherman Act into operation. * * *"

Obviously these holdings conform with the following well-established principles: (1) a state may not obstruct or lay a direct burden on the privilege of engaging in interstate commerce, *Furst v. Brewster*, 282 U.S. 493, 498; *Mich. Com. v. Duke*, 266 U.S. 570, 577, 69 L. ed. 445; but (2) nevertheless it may incidentally and indirectly affect it by a bona fide, legitimate, and reasonable exercise of its police power. 15 C.J.S. 266. In *Dahnke-Walker Co. v. Bondurant*, 257 U.S. 282, 290, the court said:

"The commerce clause of the Constitution, Art. I, §8, cl. 3, expressly commits to Congress and impliedly withholds from the several States the power to regulate commerce among the latter. Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. * * *"

The power here referred to may be exercised, not only in an act of Congress, but also in a regulation by the Interstate Commerce Commission. 15 C.J.S. 274.

Part I of the Interstate Commerce Act¹⁵ deals with railroads as well as other subjects not relevant here. §3 (3) thereof, in its presently pertinent provisions, appeared in the original act of February 4, 1887.¹⁶ It provides that all carriers of passengers subject to the act shall afford all [fol. 194] reasonable facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers to and from connecting lines.¹⁷ *Central Transfer Co. v. Terminal R. R.*, 288 U.S. 469, 473, note 1.

¹⁵ 49 U.S.C.A. §§ 1-27.

¹⁶ § 3, second unnumbered paragraph, 24 Stat. 380.

¹⁷ There is no warrant for limiting the meaning of "connecting lines" to those having a direct physical connection. The term is commonly used as referring to all the lines making up a through route. *Atlantic Coast Line R. Co. v. U. S.*, 284 U.S. 288, 293.

Part II of the same act¹⁸ deals with motor carriers. As amended in 1940, 302(c)¹⁹ provides as follows:

“§202(c) “Notwithstanding any provision of this section or of section 203, the provisions of this part, [Part II], except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

“(1) to transportation by motor vehicle by a carrier by railroad subject to part I, * * * incidental to transportation or service subject * * * [thereto] in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad * * *;

“(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, * * * in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier * * * as part of, and shall be regulated in the same manner as, the transportation by railroad, * * * to which such services are incidental.”

In Part I, §6(1) of the Interstate Commerce Act²⁰ requires every common carrier to file with the commission tariffs (therein referred to as schedules), for transportation, including joint rates over through routes. In this [fol. 195] respect a tariff is to be treated the same as a statute. *Pennsylvania R. Co. v. International Coal Min. Co.*, 230 U.S. 183, at 197, 57 L. ed. 1446, 1451.

Relevant tariffs were filed with the Interstate Commerce Commission on behalf of the Terminal Lines.

¹⁸ 49 U.S.C.A. §§ 301-327 (1951 ed.).

¹⁹ 56 Stat. 300, where this section is known as section 202(c).

²⁰ 49 U.S.C.A. § 6(1).

The agreement of October 1, 1955²¹ obligates Transfer to perform all the required passenger and hand baggage transfer service from the terminal station in Chicago of each incoming line to the terminal station in Chicago of each outgoing line, all at the expense of the latter, for the period beginning October 1, 1955 and ending September 30, 1960. This service (which has been since October 1, 1955 performed by Transfer) replaced the Parmelee service, with the exception of two types of operations local in their nature,²² consisting of (a) transportation of friends or relatives accompanying a coupon holder between stations, and (b) transportation of a coupon holder to any hotel or other terminus "in the loop district of Chicago", as requested of the driver by the coupon holder.

2. We conclude that Transfer is an instrumentality used by Terminal Lines in interstate commerce and is subject to control of the federal government. We also conclude that the city can neither give nor take away such authority of Transfer to operate and that the city has no power of control over Transfer, except the control which it has generally in exercising its police power pertaining to such matters as public safety, maintenance of streets and the convenient operation of traffic. For a more detailed statement of the scope of such police power, see *Continental Baking Co. v. Woodring*, 286 U.S. 352.

This is not a case in which a motor vehicle operator is denied the privilege of operating on a particular highway because of the congestion of traffic thereon, such as was true in *Bradley v. Public Utility Commission*, 289 U.S. 92, (on which, for some reason not clear to us, the city relies), but rather we have a case where an ordinance, in effect, bars Transfer from the entire network of highways within the downtown area of Chicago.

²¹ The Baltimore and Ohio Chicago Terminal Railroad Company, Chicago and Western Indiana Railroad Company and Chicago Union Station Company, therein referred to as "depot companies", are also parties to said agreement. That fact is not controlling in the decision of this case.

²² See *Status of Parmelee Trans. Co.*, 288 I.C.C. 95, at 100.

[fol. 196] Pursuant to federal law, Terminal Lines have assumed an obligation to furnish the service in question as an interstation link in interstate commerce. The integration of this service with the complex, and occasionally changing, schedules of the Terminal Lines and the ebb and flow of passenger traffic existing in the various stations, requires a continuing and intimate knowledge thereof, which the Terminal Lines possess. The city is not equipped to function effectively in this area. It follows that the choice as to the instrumentality to be used for that purpose properly belongs to the Terminal Lines. These facts preclude the selection of an operator of terminal vehicles by anyone other than the Terminal Lines. While the city has power to regulate the operation of terminal vehicles incidentally to its regulation of street traffic generally, it has no power, directly or indirectly, to designate who shall own or operate such vehicles. The prior ordinance recognized this situation. It was limited to terminal vehicles having contracts with the Terminal Lines and, as to which vehicles, it exercised certain police powers of the city relating to traffic regulation. That ordinance made no attempt, and it was not intended, to select the operator of the service. In contrast, the 1955 ordinance consists of provisions which, in effect, name Parmelee as the exclusive operator of terminal vehicles in Chicago even though it has no contract with the Terminal Lines which are under a federally imposed obligation to furnish this terminal facility. Each of the Terminal Lines, which sells through tickets calling for interstate transportation in Chicago, thereby assumes an individual obligation to the passenger to furnish that service. Yet, under the 1955 ordinance, that railroad would have no direct control over the operator of that service, and no opportunity to protect itself by an agreement indemnifying it from claims of passengers for damages arising out of the negligence of the operator. Other obvious considerations point to the practical necessity of a continuing control by the Terminal Lines of the instrumentality furnishing the service covered by the coupons sold by those lines to interstate passengers.

3. However, the city contends that the 1955 ordinance not only retains the police regulations of the prior ordi-

nance, but demonstrates the city's concern with all passenger vehicles for hire, and specifically with the effect of the number of taxicabs as well as terminal vehicles on the safety of existing vehicular and pedestrian traffic. [fol. 197] The city contends that in this respect the ordinance is valid as an exercise of the police power.

But the Terminal Lines argue that the 1955 ordinance was adopted for the sole and evident purpose, not of police power regulation, but of economic regulation. They say that, not only would the 1955 ordinance add nothing in respect to police power regulations that were not contained in the prior ordinance, but that the 1955 ordinance added "elaborate requirements for proof of public convenience and necessity and other elements of economic regulation of interstate commerce * * *." They add "that these new economic regulations would apply to all except Parmelee; Parmelee was granted a perpetual franchise free from these requirements. The amendment eliminated the requirement that no one could obtain a license unless he had a contract for interstation transfer with the railroads. The amendment unmistakably marked the ordinance as an economic regulation not within the city's power."

Significant is §28-31.1 of the 1955 ordinance which provides that no license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed, unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued. It is further provided that, in determining whether public convenience and necessity require such additional service, the following, *inter alia*, shall be considered: "2. The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation; * * *".

Terminal Lines argue that these are the only provisions of the 1955 ordinance which could even appear to relate to public safety. But they aver that, as a purported safety measure, this is sham and spurious.

To us it appears that the cost of maintaining the terminal vehicle service, which is initially borne by Transfer and ultimately, to the extent of coupons issued and used, by the individual Terminal Lines, will operate effectively as an economic brake upon any unjustified increase in the number of such vehicles. Moreover, if and when a greater number is demanded by the growth of interstate passenger [fol. 198] traffic, the city would then have no right, in the guise of an exercise of its police power, to cripple interstate commerce by preventing a justifiable increase in the number of such vehicles required to meet the needs of that commerce.

We are thus led to conclude that there is no valid legal basis for the above-cited provisions of §28-31.1 of the 1955 ordinance. We are convinced that those provisions, which would in effect limit the number of terminal vehicle licenses to those held by Parmelee on July 26, 1955 and give Parmelee perpetual control thereof, constitute a designation of Parmelee by the council of the city, in lieu of Transfer, the instrumentality selected by the Terminal Lines, rather than an exercise of the city's police power over traffic. In this critical aspect the 1955 ordinance is invalid. If there were any doubt that this conclusion is correct, the legislative history of the ordinance dispels that doubt.

At meetings of the committee which recommended the 1955 ordinance for passage, the committee chairman made it clear that the objective sought was the assumption by the city of the authority to designate the instrumentality which was to operate terminal vehicles between railroad stations in Chicago. The proceedings of the committee fail to indicate that the chairman or any member of the committee was interested in traffic regulations or any other aspect of the city's police power.

In attempting to justify the 1955 ordinance, which admittedly retained police regulations contained in the prior ordinance, the city points to photographs of two transfer vehicles which, the city says, do not comply with retained §28-4.1, which provides that no vehicle having a seating capacity for more than 7 passengers shall be licensed as a public passenger vehicle unless at least 3

doors on each side or a fixed aisle space is provided, and retained §28-17, which provides that it is unlawful to permit more than one passenger to occupy the front seat with the chauffeur. There is no indication in the record that any terminal vehicles used by Transfer, except the two appearing in the photographs, violate §28-4.1. Even if §28-4.1 and §28-17 are violated, that fact does not empower the city to bar, or even suspend, the operations of Transfer. *Castle v. Hayes Freight Lines*, 348 U.S. 61. [fol. 199]. The fact that Hayes was operating trucks under a federal certificate of convenience and necessity, under Part II of the Interstate Commerce Act,²³ does not distinguish that case in principle from the present case in which Transfer is engaged in a federally authorized activity. See 49 U.S.C.A. §302(c)(2), *supra*. If Transfer's vehicles do not conform to the requirements contained in the prior ordinance,²⁴ the city may refuse to issue licenses for the non-conforming vehicles and penalize their unlicensed operation in accord with §28-32. So, also, whenever Transfer is found guilty of violating §28-17 the city may proceed against it according to the penalties section.²⁵

Undoubtedly the city has power to require that one engaged exclusively in interstate commerce may be required to procure from the city a license granting permission to use its highways and in addition pay a license fee demanded of all persons using automobiles on its highways as a tax for the maintenance of the highways and the administration of the laws governing the same. Highways being public property, users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state or municipality to ensure safety and

²³ 49 U.S.C.A. § 301, *et seq.*

²⁴ Ch. 28, Chicago Municipal Code.

²⁵ § 28-32. "Any person violating any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than \$5.00 nor more than \$100.00 for the first offense, not less than \$25.00 nor more than \$100.00 for the second offense during the same calendar year, and not less than \$50.00 nor more than \$100.00 for the third and succeeding offenses during the same calendar year and each day that such violation shall continue shall be deemed a separate and distinct offense."

convenience and the conservation of the highways. Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged a tax for such use. *Clark v. Poor*, 274 U.S. 554, 557.

Both the language of the 1955 ordinance and its legislative history point to the fact that it is not legislation governing the manner of conducting a business or providing for a contribution toward the expense of highway maintenance, but that it requires a license, the granting of which, in turn, is made dependent upon the consent of the city to the prosecution of a business. This is not a valid requirement. See *Sault Ste. Marie v. International Transit Company*, 234 U.S. 333, 340, 58 L. ed. 1337, 1340.

[fol. 200] As we have seen, the 1955 ordinance eliminated from §28-1 of the prior ordinance a requirement that a terminal vehicle must be operated under contracts with railroad and steamship companies, and, by a new section, §28-31.1, in effect permitted Parmelee's existing terminal vehicle licenses to become perpetual by means of annual renewal or by transfer to a replacement vehicle, and also provided, in effect, that Transfer could not obtain any terminal vehicle license unless it proved to the satisfaction of the public vehicle license commissioner "that public convenience and necessity shall require additional terminal vehicle service".

In *Buck v. Kuykendall*, 267 U.S. 307, it appears that Buck wished to operate an autostage line as a common carrier for hire for through interstate passengers, over a public highway in the state of Washington. Having complied with the state laws relating to motor vehicles and owners and drivers, and alleging willingness to comply with all applicable regulations concerning common carriers, Buck applied to the state for a prescribed certificate of public convenience and necessity. It was refused on the ground that the territory involved was already being adequately served by the holder of a certificate and that adequate transportation facilities were already being provided by four connecting autostage lines, all of which held such certificates from the state. The

state, relied upon its statute which prohibited common carriers for hire from using the highways by auto vehicles between fixed termini, or over regular routes, without having first obtained from the state a certificate of public convenience and necessity. Speaking of that statute, the court said, at 315:

"* * * Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner. * * * Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the Commerce Clause. * * *"

[fol. 201] To the same effect is *Mayor of Vidalia v. McNeely*, 274 U.S. 676, at 683.²⁶

4. We hold that it was unnecessary for Transfer to apply for licenses under the 1955 ordinance, because the issuance thereof unlawfully required a consent by the city

²⁶ Both sides in the case at bar rely on *Columbia Terminals Co. v. Lambert*, 30 F. Supp. 28, appeal dismissed, 309 U.S. 620. The court there said that the question whether the state could demand that Columbia Terminals prove that its interstate commerce transfer operation would benefit the state, in order to obtain a state permit therefor, was not before it, because the state expressly admitted it lacked such power and made no such demand. The court said, at 31:

"Since this statute applies to interstate as well as intrastate contract haulers, if the complaint alleged or the evidence disclosed such action on the part of the State Commission, plaintiff would be entitled to relief from such action on the part of the state officials. * * * But when the State * * * undertakes to exercise the right to say what interstate commerce will benefit the State and what will not, such action, with certain exceptions immaterial here, constitutes an unconstitutional violation of the commerce clause."

While this is dictum, it is in accord with our holding herein.

to the prosecution of Transfer's business and was not merely a step in the regulation thereof. Being unnecessary, the relief prayed for herein may be granted without a showing that such application had been made before this suit was filed.

For the reasons hereinbefore set forth, the judgment of the district court is reversed and this cause is remanded to that court for further proceedings not inconsistent with the views herein set forth.

Reversed and Remanded.

[fol. 202] IN UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Before Hon. J. EARL MAJOR, Circuit Judge, Hon. H. NATHAN SWAIM, Circuit Judge, Hon. ELMER J. SCHNACKENBERG, Circuit Judge.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY, ET AL., Plaintiffs-Appellants,

No. 11692

v.

CITY OF CHICAGO, ET AL., Defendants-Appellees
and

PARMELEE TRANSPORTATION COMPANY, Defendant-
Intervenor-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

JUDGMENT—January 17, 1937

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court

in this cause appealed from be, and the same is hereby, Reversed, with costs; and that this cause be, and the same is hereby, Remanded to the said District Court for further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

[fol. 203] IN UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Chicago 10, Illinois

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—

February 20, 1957

It is ordered by the Court that appellees' petitions for a rehearing of this cause be, and the same are hereby, Denied.

[fol. 204] [File endorsement omitted]

[fol. 205] IN THE UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed March 27, 1957

I.

Notice is hereby given that Parmelee Transportation Company, Defendant-Intervenor-Appellee, hereby appeals to the Supreme Court of the United States from the judgment entered by the Court of Appeals of the Seventh Circuit, on January 17, 1957, reversing the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered on January 12, 1956.

[fol. 206] This appeal is taken pursuant to 28 U.S.C. § 1254(2).

II.

The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

Transcript of record filed February 20, 1956.

Judgment and order of the Court of Appeals of the Seventh Circuit entered January 17, 1957.

Order of the Court of Appeals of the Seventh Circuit entered February 20, 1957, denying Appellees' petitions for rehearing.

Notice of Appeal to the Supreme Court of the United States.

III.

The following questions are presented by this appeal:

1. Whether the Court of Appeals erred in holding that the City of Chicago could not constitutionally require the appellee Railroad Transfer Service, Inc., a non-certificated motor carrier engaged primarily in interstate commerce wholly within the City of Chicago, to secure a license in order to use the public streets and highways within that city, where the license requirement was a means of effectuating a plan of regulation relating to traffic control, public safety, and maintenance of the streets and highways within the City of Chicago.

[fol. 207] 2. Whether the Court of Appeals erred in gratuitously anticipating a constitutional question by not requiring the appellee Railroad Transfer Service, Inc. to exhaust its administrative remedies by applying for a license as required by the Municipal Code of the City of Chicago, §§ 28-1 through 28-32.

3. Whether the Court of Appeals erred in imputing improper motives to the City Council of the City of Chicago

in order to hold that the ordinance in question was unconstitutional as applied to the appellee, Railroad Transfer Service, Inc.

4. Whether the Court of Appeals erred in substituting its judgment for that of the City Council of the City of Chicago with respect to whether the licensing of motor vehicles performing transfer services within the City of Chicago was an appropriate means of effectuating the police power of the City of Chicago, exercised for the purpose of controlling traffic, effecting public safety and maintaining streets and highways within the City of Chicago.

Lee A. Freeman, Attorney for Parmelee Transportation Company.

[fol. 208] PROOF OF SERVICE (omitted in printing).

[fol. 210] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 211] SUPREME COURT OF THE UNITED STATES
No. 905, October Term, 1956

CITY OF CHICAGO, a Municipal Corporation Petitioner,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;
THE BALTIMORE AND OHIO RAILWAY COMPANY; ET AL.

ORDER ALLOWING CERTIORARI—Filed May 27, 1957

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 213] SUPREME COURT OF THE UNITED STATES

No. 906, October Term, 1956

PARMELEE TRANSPORTATION CO., ET AL., Appellants,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., ET AL.

ORDER POSTPONING JURISDICTION—May 27, 1957

Appeal from and petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. Counsel are invited to discuss the following jurisdictional issues:

1. Whether Parmelee Transportation Co. has standing to seek review here on appeal or by writ of certiorari.

2. Whether the judgment of the Court of Appeals is "final" so as to permit review by way of appeal under 28 U.S.C. § 1254(2). Cf. *Slaker v. O'Connor*, 278 U.S. 188, 189; *South Carolina Electric & Gas Co. v. Flemming*, 351 U.S. 901.

in proper form; and further that said counsel "had prepared a substitute ordinance which would accomplish what the committee had in mind, namely, placing the licensing and operation of terminal vehicles under the complete control of the City of Chicago." (Appendix B, p. 43.)

The Court of Appeals was in error, *first* as to the nature of the proposed franchise ordinance; *second*, as to the nature of the objection to said proposed ordinance by counsel; and *third*, as to the meaning and purpose of the substitute ordinance.

The first error appears in the definition of "terminal vehicle" in the proposed franchise ordinance which clearly indicates that it was not for the operation of terminal vehicles "to transfer passengers and their baggage *between* railroad stations," as stated by the Court of Appeals (Appendix B, p. 43), but was "for the transfer of passengers *to and from* terminal stations of railroad and steamship companies." (Plaintiffs' Exhibit No. 3, Tr. 85.)

The second error was that counsel for the city did not state that he objected to the *form* of the proposed franchise ordinance, but he questioned the *corporate power* of the city to enact such ordinance (Tr. 91). Counsel no doubt had in mind the statutory provisions printed in Appendix A hereto, all of which relate to police regulations, *not including an exclusive grant* to use the city streets for local transportation of passengers for hire.

The third error was that counsel for the city stated quite clearly that terminal vehicles as defined (before the 1955 amendments) did not embrace those vehicles that operated *between* railroad stations. "The operation (was) from the railroad stations to points within the central business district. It is in the railroad terminal area, but it isn't necessarily *between* railroad stations. It may go from railroad stations to hotels and from hotels to railroad stations. That is the operation. And that operation can be continued